92-519

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

T. K. WETHERELL, Speaker of the Florida House of Representatives, PETER R. WALLACE, Chairman of the Reapportionment Committee of the Florida House of Representatives, LAWTON CHILES, Governor of the State of Florida, ROBERT A. BUTTERWORTH, Attorney General of the State of Florida, and JIM SMITH, Secretary of State of the State of Florida,

Appellants,

v.

MIGUEL DE GRANDY, MARIO DIAZ-BALART, ANDY IRELAND, CASIMER SMERICKI, VAN B. POOLE, TERRY KETCHEL, ROBERTO CASAS, RODOLFO GARCIA, JR., LUIS ROJAS, LINCOLN DIAZ-BALART, JAVIER SOUTO, JUSTO LUIS POSO, ALBERTO CARDENAS, REY VELAZQUEZ, LUIS MORSE, ALBERTO GUTMAN, KAREN E. BUTLER, SGT. AUGUSTA CARTER, JEAN VAN METER, ANNA M. PINELLAS, ROBERT WOODY, GINA HAHN, BILL PETERSEN, TERRY KESTER, MARGIE KINCAID and BROOKS WHITE and the UNITED STATES OF AMERICA,

Appellees.

On Appeal from the United States District Court for the Northern District of Florida

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APPENDIX TO JURISDICTIONAL STATEMENT

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TCA 92-40015-WS

MIGUEL DE GRANDY, *et al.*,
Plaintiffs,

and

GWEN HUMPHREY, *et al.*,
Plaintiffs-Intervenors

v.

T.K. WETHERELL, *et al.*,
Defendants.

TCA 92-40131-WS

FLORIDA STATE CONFERENCE OF NAACP BRANCHES, *et al.*,
Plaintiffs,

v.

LAWTON CHILES, *et al.*,
Defendants.

TCA 92-40220-WS

UNITED STATES OF AMERICA,
Plaintiffs,

v.

STATE OF FLORIDA, *et al.*,
Defendants.

JUDGMENT

[Filed Jul. 2, 1992]

Before HATCHETT, Circuit Judge, STAFFORD and VINSON, District Judges

BY THE COURT

It is ORDERED, ADJUDGED, and DECREED as follows:

1. The state of Florida's house of representative districts embodied in Senate Joint Resolution 2-G as validated by the Florida Supreme Court on May 13, 1992, violate Section 2 of the Voting Rights Act of 1965, as amended (42 U.S.C. § 1973, et seq.).

5. The Court adopts plan 268, the Modified De Grandy House of Representatives Plan as the plan to be utilized in the 1992 Florida State House of Representatives elections and in Florida State House of Representatives elections thereafter. This plan shall henceforth be referred to as the "1992 Florida House Plan";

6. The defendants, individually, and their successors, agents, employees, attorneys, and persons acting in concert or in participation with them shall:

(a) conduct elections for the Florida House of Representatives in 1992 in accordance with the redistricting plan this court has adopted called the "1992 Florida House Plan," a map and written description of which will be filed as a supplement to this Judgment;

(b) conduct elections for the Florida House of Representatives in years after 1992 in accordance with the 1992 Florida House Plan.

DONE AND ORDERED this 2nd day of July, 1992.

/s/ Joseph W. Hatchett
JOSEPH W. HATCHETT
United States Circuit Judge

/s/ William Stafford
WILLIAM STAFFORD
United States District Judge

/s/ Roger Vinson
ROGER VINSON
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TCA 92-40015-WS

MIGUEL DE GRANDY, *et al.*,
Plaintiffs,

and

GWEN HUMPHREY, *et al.*,
Plaintiffs-Intervenors

v.

T.K. WETHERELL, *et al.*,
Defendants.

TCA 92-40131-WS

FLORIDA STATE CONFERENCE OF
NAACP BRANCHES, *et al.*,
Plaintiffs,

v.

LAWTON CHILES, *et al.*,
Defendants.

TCA 92-40220-WS

UNITED STATES OF AMERICA,
Plaintiffs,

v.

STATE OF FLORIDA, *et al.*,
Defendants.

JUDGMENT

[Filed Jul. 2, 1992]

Before HATCHETT, Circuit Judge, STAFFORD and VINSON, District Judges

BY THE COURT

It is ORDERED, ADJUDGED, and DECREED as follows:

1. The state of Florida's state senatorial districts embodied in Senate Joint Resolution 2-G, as modified by the Florida Supreme Court on June 25, 1992 ["1992 Florida Senate Plan"] do not violate Section 5 of the Voting Rights Act of 1965, as amended, (42 U.S.C. § 1973 et seq.).

2. The court adopts the 1992 Florida Senate Plan as the plan to be utilized in the 1992 Florida State Senate elections and in Florida State Senate Elections thereafter.

3. The state of Florida's state senatorial districts embodied in the 1992 Florida Senate Plan to do not violate Section 2 of the Voting Rights Act of 1965, as amended (42 U.S.C. § 1973 et seq.).

3. The defendants, individually, and their successors, agents, employees, attorneys, and persons acting in concert or in participation with them shall:

(a) conduct state senatorial elections in 1992 in accordance with the 1992 Florida Senate Plan, a map and written description of which are attached to this Judgment;

(b) conduct state senatorial elections in years after 1992 in accordance with the 1992 Florida Senate Plan.

DONE AND ORDERED this 2nd day of July, 1992.

/s/ Joseph W. Hatchett
JOSEPH W. HATCHETT
United States Circuit Judge

/s/ William Stafford
WILLIAM STAFFORD
United States District Judge

/s/ Roger Vinson
ROGER VINSON
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TCA 92-40015-WS

MIGUEL DE GRANDY, MARIO DIAZ-BALART, ANDY IRELAND, CASIMER SMERICKI, VAN B. POOLE, TERRY KETCHEL, ROBERTO CASAS, RODOLFO GARCIA, JR., LUIS ROJAS, LINCOLN DIAZ-BALART, JAVIER SOUTO, JUSTO LUIS POSO, ALBERTO CARDENAS, REY VELAZQUEZ, LUIS MORSE, ALBERTO GUTMAN, KAREN E. BUTLER, SGT. AUGUSTA CARTER, JEAN VAN METER, ANNA M. PINELLAS, ROBERT WOODY, GINA HAHN, BILL PETERSEN, TERRY KESTER, MARGIE KINCAID, and BROOKS WHITE,

Plaintiffs,

v.

T.K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, LAWTON CHILES, in his official capacity as Governor of the State of Florida, JACK GORDON, in his official capacity as Chairman of the Senate Reapportionment Committee, PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida,

Defendants.

TCA-No. 92-40131-WS

FLORIDA STATE CONFERENCE OF NAACP BRANCHES, T. H. POOLE, SR., WHITFIELD JENKINS, LEON W. RUSSELL, WILLYE DENNIS, TURNER CLAYTON, RUFUS BROOKS, VICTOR HART, KERNA ILES, ROOSEVELT WALTERS, JOHNNIE MCMILLIAN, PHYLLIS BERRY, MARY A. PEARSON, MABLE BUTLER, IRIS WILSON, JEFF WHIGHAM, AL DAVIS, PEGGY DEMON, CARLTON MOORE, RICHARD POWELL, NEIL ADAMS, LESLIE MCDERMOTT, ROBERT SAUNDERS, SR., IRV MINNEY, ADA MOORE, ANITA DAVIS, and CALVIN BARNES,

Plaintiffs,

v.

LAWTON CHILES, in his official capacity as Governor of Florida, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, T. K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, JACK GORDON, in his official capacity as Chairperson of the House Reapportionment Committee, and PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee,

Defendants.

TCA-No. 92-40220-WS

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF FLORIDA, a State of the United States; T. K. WETHERELL, Speaker of the Florida House of Representatives; GWEN MARGOLIS, President of the Florida Senate; LAWTON CHILES, Governor of the State of Florida; ROBERT BUTTERWORTH, Attorney General for the State of Florida; PETER R. WALLACE, Chairman of the House Reapportionment Committee; JACK GORDON, Chairman of the Senate Reapportionment Committee; JIM SMITH, Secretary of State for the State of Florida,

Defendants.

[Filed Jul. 17, 1992]

Before HATCHETT, Circuit Judge, STAFFORD and VINSON, District Judges.

I. PROCEDURAL HISTORY

Florida currently has forty Senate districts and one hundred twenty House of Representative districts. These districts were created in 1982 and are currently malapportioned. According to the 1990 census data, the total population of the state of Florida is 12,937,926 persons. Between the census of 1980 and 1990, Florida's population increased 3,213,602 persons. To achieve equality between Florida's forty Senate districts, each district would ideally contain 323,448 persons. To achieve equality between Florida's one hundred twenty House districts, each district would ideally contain 107,816 persons.

On the opening day of the 1992 Florida legislative session, Miguel De Grandy, a member of the Florida House of Representatives, and other registered voters ("De Grandy plaintiffs") filed a complaint against the Speaker of the Florida House of Representatives, the President of the Florida Senate, the Governor of Florida, and other state officials. The De Grandy plaintiffs filed the complaint in this court challenging the constitutionality of Florida's current congressional and state legislative districts. The De Grandy plaintiffs alleged that the current districts violate both the Equal Protection Clause of the United States Constitution and the Voting Rights

Act of 1965, as amended, and urged this court to assert jurisdiction in order to redistrict and reapportion the state.

The De Grandy plaintiffs filed a first amended complaint on January 23, 1992. The defendants moved to dismiss the complaint. After hearing arguments on the motion, the court dismissed the action without prejudice for lack of subject matter jurisdiction (document 41). On March 9, 1992, the De Grandy plaintiffs filed a second amended complaint (document 44) alleging violations of Article I, Section 2 of and the Fourteenth and Fifteenth Amendments to the United States Constitution as well as violations of Sections 2 and 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973 et seq.

In short, Count I alleged that the present Florida House and Senate districts were unconstitutional inasmuch as they violated the Equal Protection Clause of the Fourteenth Amendment, Article I, Section 2 of the United States Constitution and the "one-person, one-vote" principle. Count II alleged that because these districts diluted the voting strength of minority voters, they violated the Voting Rights Act of 1965, as amended. Count III alleged that the Florida Legislature was at an impasse in adoption of state redistricting plans. Counts V and VI alleged that the time lines for redistricting set forth in Article III, Section 16 of the Florida Constitution, in conjunction with the preclearance requirements of Section 5 of the Voting Rights Act, "permit the adoption and implementation of new district lines to take place so late in the year after the decennial census" that they result in a deprivation of plaintiffs' right to participate in the 1992 elections on a fair and equal basis.[1] Document 44 at ¶ 120.

[1] Article 3, Section 16(a) of the Florida Constitution provides that:

> *Senatorial and representative districts.* The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory.

If the legislature should fail at its regular session to apportion themselves into the legislative districts as required by Article 3, Section 16, the governor is required to reconvene the legislature within thirty days in a special apportionment session not to exceed thirty consecutive days. Fla. Const. Art. 3 § 16(a). During this time, no other business shall be transacted and it shall be the mandatory duty of the legislature to adopt a joint resolution. Fla. Const. Art. 3 § 16(a). If the legislature adopts a reapportionment plan, the constitution requires the attorney general to petition the Florida Supreme Court for a declaratory judgment determining the validity of the apportionment. Fla. Const. Art. 3 § 16(c). The Supreme Court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

If the Supreme Court determines that the apportionment made by the legislature is invalid, the governor shall reconvene the legislature within five days thereafter in an extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of apportionment conforming to the judgment of the Supreme Court. Fla. Const. Art. 3 § 16(d). If the Supreme Court determines that the legislative apportionment is valid, the plan must be precleared by the Department of Justice before it may be considered validly enacted. Until the plan is precleared, it may not be used in any election.

The Florida constitution is silent as to what occurs if the Department of Justice fails to preclear a plan previously validated by the Supreme Court. In its order dated May 13, 1992, the Florida Supreme Court explicitly "retain[ed] exclusive state jurisdiction to consider any and all future proceedings relating to the validity of this apportionment plan." *In re: Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*, No. 79-674, slip op. at 23 (Fla. May 13, 1992).

Count V alleged a facial challenge, while Count VI alleged an "as applied" challenge. Count VII alleged that certain defendants have "intentionally misused the time lines and procedures found in Article III . . . to delay the redistricting process to the advantage of white incumbents and to

the detriment of voters and would be challengers to those incumbents. Document 44 at ¶ 130. On March 13, 1992, the Florida legislature ended its regular session without adopting a state reapportionment plan.

On March 27, 1992, this three-judge court convened, denied all motions to dismiss and established an expedited schedule for adoption of congressional and state legislative plans by May 29, 1992 (document 56). That scheduling order in no way enjoined or prevented state redistricting and reapportionment agencies from attempting to enact their own plans. On April 2, 1992, the Governor of Florida, called a special redistricting and reapportionment session of the Florida Legislature pursuant to Article III, Section 16(a), of the Florida Constitution. On April 10, 1992, the legislature adopted Senate Joint Resolution 2-G reapportioning state House and Senate districts.

Meanwhile, this case progressed and on April 6, 1992, the court appointed a special master pursuant to Fed.R. Civ.P. 53 for both Congressional and legislative reapportionment. On April 7, 1992, the court consolidated this case with a similar lawsuit filed by the Florida State Conference of the NAACP Branches and many individual African-American voters. The court also granted other persons and organizations leave to intervene or act as amicus curiae.[2] On April 17, 1992, the Attorney General of the State of Florida submitted Senate Joint Resolution

[2] Those acting as amici are Simon Ferro, State Chairman of the Florida Democratic Party; Common Cause; Florida AFL-CIO; United States Representative Craig James; the Cuban American Bar Association; The Coalition of Hispanic Women; and State Representative Daniel Webster. Plaintiff-intervenors include Gwen Humphrey, Vivian Kelly, Gene Adams, Wilmateen W. Chandler, Dr. Percy L. Goodman, Jesse L. Nipper, Moease Smith, and Carolyn L. William ["Humphrey Intervenors" or "plaintiffs"]; State Representatives Darryl Reaves, Corinne Brown and James T. Hargrett ["Reaves-Brown" or "plaintiffs"], United States Representative Jim Bacchus; and United States Representative Andy Ireland. State Representative Alzo Reddick is a defendant-intervenor.

2-G concerning state legislative reapportionment to the United States Department of Justice (DOJ) for preclearance pursuant to Section 5 of the Voting Rights Act. That same day, this court issued an order bifurcating the congressional redistricting and state reapportionment hearings. The special master promptly concluded his hearings on congressional redistricting and issued his report and recommendation. This court considered the parties objections, conducted a hearing and issued its judgment on May 29, 1992 (document 439).

On May 13, 1992, the Florida Supreme Court validated Senate Joint Resolution 2-G. As a result of the validation, this court stayed proceedings related to state reapportionment until May 27, 1992. A hearing was held on May 27, 1992 at which time the court considered all pending motions.[3] At the hearing, the court granted the government's motion to be dismissed as a party to the litigation, but invited comments from J. Gerald Hebert of the United States DOJ. Mr. Hebert advised the court that the Justice Department would probably issue its decision by June 17, 1992 as to whether the House and Senate plans would be precleared. All other motions were denied, and the stay of legislative reapportionment was continued.

On June 16, 1992, the DOJ issued its preclearance decision, noting that its review and determination addressed the plans only insofar as the five preclearance counties were affected. Exhibit 1 to document 447. The Attorney

[3] The motions included the Attorney General's Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim Upon Which Relief Can Be Granted (document 363), an Application for Preliminary Injunction Against Implementation of SJR 2-G filed by the Humphrey intervenors (document 390), a Motion for Temporary Restraining Order and Preliminary Injunction (document 391) and a Motion to Lift Stay, Establish Scheduling Order and Set Trial on Legislative Redistricting (document 416) filed by the DeGrandy plaintiffs (document 416) and a Motion to Dismiss and for Injunctive Relief filed by the defendants' (document 426).

General of the United States did not interpose any objection to the Florida House of Representatives redistricting plan. The DOJ refused to preclear the Senate plan stating:

> We are unable to reach the same conclusion with regard to the Senate redistricting plan. With regard to the Hillsborough County area, the state has chosen to draw its senatorial districts such that there are no districts in which minority persons constitute a majority of the voting age population. To accomplish this result, the state chose to divide the politically cohesive minority populations in the Tampa and St. Petersburg areas. Alternative plans were presented to the legislature uniting the Tampa and St. Petersburg minority populations in order to provide minority voters an effective opportunity to elect their preferred candidate to the State Senate. . . . [T]he information before us, including the economic and other ties between Tampa and St. Petersburg, as well as the political cohesiveness of minority voters in those two cities, demonstrates that the two areas do share a commonality of interest. Finally, we have examined evidence, including evidence in the legislative record, which suggests that the state's approach to senatorial redistricting in the Hillsborough area was undertaken with an intent to protect incumbents. Such a rationale, of course, cannot justify the treatment of minority voters in this area by the State Senate plan.

Exhibit 1 to document 447 at 2-3.

Plaintiffs immediately filed a Renewed and Expedited Motion to Lift Stay, Establish Scheduling Order, and Set Trial on Legislative Redistricting (document 444) and a Motion for Leave to File Third Amended Complaint (document 448). The latter was granted and in their third amended complaint, plaintiffs added a count alleging that the 1992 joint resolution of apportionment

violated Section 2 of the Voting Rights Act. On June 18, 1992, the court issued a scheduling order and set a hearing on all pending motions for June 26, 1992 (document 449).

The Florida Supreme Court set an expedited schedule to address the DOJ's objection to the Senate plan. In its order dated June 17, 1992, the Supreme Court encouraged the legislature to adopt a proper reapportionment plan, taking into consideration the objections of the Justice Department. *See* Exhibit A to document 462 at 2. The order continued: "In the event the Legislature declares its inability to adopt a reapportionment plan or fails to adopt a plan by June 24, 1992, this Court will conclude that a legislative impasse has occurred, and this Court will promptly undertake to make such reapportionment." The court also set forth an abbreviated time frame within which action must be taken.[4]

In a letter dated June 18, 1992, the Speaker of the House (defendant Wetherell) and President of the Senate (defendant Margolis) advised the Supreme Court of their decision not to convene their respective Houses in an extraordinary apportionment session. *See* Exhibit A to document 478. The court was also advised that the Governor did not intend to convene the legislature in an extraordinary apportionment session. Exhibit A to document 478. In an order dated June 17, 1992, the Florida

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[4] "[A]ll interested parties are advised that they may file with this Court pertinent briefs and proposed alternate plans by no later than the following, whichever occurs first:

(a) two days after the Legislature's adoption of a reapportionment plan;

(b) two days after the Legislature's declaration of an inability to adopt a reapportionment plan; or

(c) June 26, 1992.

Exhibit A to document 462 at 2.

Supreme Court declared a legislative impasse and adopted an amended schedule.[5]

Jurisdictional questions were raised both in this court and in the Florida Supreme Court. The De Grandy plaintiffs filed their action in this court on January 14, 1992, and have continually asserted that jurisdiction to correct the Department's Section 5 objection lies only in this court. The Florida Supreme Court, however, without discussing the propriety of concurrent federal jurisdiction, held that

> [T]he reapportionment of state legislative bodies is not a power delegated by the Constitution of the United States to the federal government. Under the provisions of the Tenth Amendment to the United States Constitution, this is a power reserved to states. Of course, this Court is obligated to apply any applicable federal constitutional provisions and any federal statutes implementing these provisions.
>
> The Florida Constitution places upon this Court the responsibility to review state legislative reapportionment, Art. III, § 16, Fla. Const. Pursuant to that authority, we approved the original legislative reapportionment and retained jurisdiction to entertain subsequent objections thereto. Consistent with the provisions of article III, section 16 of the Florida Constitution, we believe that it is our obligation to redraw the plan to satisfy the objection of the Justice Department now that the Legislature has declared that it is not going to do so.

---

[5] By that order, each interested person was permitted to submit by noon, June 22, 1992, a proposed correction to modify the redistricting plan for the Florida Senate so as to resolve the specific objection outlined by the United States Department of Justice in senate districts affecting Hillsborough County. Furthermore, each interested person was permitted to submit by noon, June 23, 1992, a report analyzing and comparing the merits of any proposal.

In Re: Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992, No. 79,674, slip. op. at 2-3 (Fla. June 25, 1992) (document 491). Defendants have consistently maintained that because Article III, Section 16 of the Florida Constitution specifically conferred jurisdiction over legislative redistricting to the Florida Supreme Court, this court should abstain in deference to the principles of comity and federalism. This court has declined the invitation to abstain.

On June 25, 1992, the Florida Supreme Court adopted a Senate redistricting plan which it felt complied with the DOJ's objection to Hillsborough County. After reviewing the six submitted plans, the Supreme Court adopted the plan submitted by Gwen Humphrey, et al., and supported by Representatitve Darryl Reaves, et al. ["Humphrey-Reaves plan"]. *Constitutionality of SJR-2G*, No. 79,674, slip. op. at 5. Chief Justice Shaw wrote separately to indicate his opinion that the overall plan—including the present revision—does not comply with Section 2 of the Voting Rights Act:

> Because this Court's review in the present proceeding is limited in scope to DOJ's section 5 preclearance inquiry, I concur in the majority opinion. I believe the present revision in the plan meets the objection evinced in DOJ's admittedly restricted review. I write to note, however, that I still conclude that the overall plan, including the present revision, fails under Section 2 of the Act because it does not provide an equal opportunity for minorities to elect representatives of their choice to the Florida legislature, as noted in my earlier dissent.

Constitutionality of SJR-2G, No. 79,674, slip. op. at 11 (Shaw, C.J. specially concurring).

The focus of this litigation has continually shifted. Plaintiffs' first amended complaint alleged that the delay inherent in Article III, Section 16 of the Florida Con-

stitution (and the fact that the legislature was not expected to pass a reapportionment plan in time for the scheduled 1992 elections) resulted in an unconstitutional intrusion in a citizen's right to vote. When the legislature passed SJR-2G, plaintiffs asserted that this plan would not be precleared by the DOJ, and then when the Senate plan was, indeed, not precleared, plaintiffs asked this court to adopt a plan which complied with Section 5 of the Voting Rights Act.

On June 23, 1992, the DOJ filed in this court its own lawsuit [6] against the State of Florida and several elected officials alleging that (1) the redistricting plans for the members of the Florida Legislature dilute the voting strength of African-American and Hispanic citizens in several areas of the state in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, et seq. and (2) the state's proposed Senate plan in the Hillsborough County area divides the politically cohesive minority populations in the Tampa and St. Petersburg areas such that there are no senatorial districts in which minority persons constitute a majority of the voting age population.[7] The

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[6] *United States v. State of Florida*, et al., TCA 92-40220-WS.

[7] This lawsuit was not entirely unexpected, for in its letter refusing to preclear the Florida Senate plan, the Justice Department indicated its belief that both the Senate and House plan contained Section 2 violations:

> Finally, we understand that there are challenges under Section 2 of the Voting Rights Act presently being considered in the consolidated cases of *De Grandy v. Wetherell*, No. 92-40015-WS and *Florida State Conference of NAACP Branches v. Chiles*, No. 92-40131-WS (N.D.Fla.). In addition, some of the comments we received alluded to various concerns involving the adequacy of the plans in non-covered counties. Because our review of these plans is limited by law to the direct impact on geographic areas covered by Section 5, we did not undertake to assess the lawfulness of the legislative choices outside of Collier, Hardee, Hendry, Hillsborough and Monroe counties. We do note, however, that allegations have been raised regarding dilution of minority covered jurisdictions, for example in the

De Grandy plaintiffs were also permitted to amend their complaint to allege Section 2 violations in both the House and Senate plans. *See* document 448.[8] On June 26, 1992, this court commenced its hearing on legislative reapportionment. At the outset, the court ruled on several pending motions [9] and heard argument on the others. After argument, the court granted Alberto R. Cardenas' and Alan K. Fortel's Motions for Leave to Appear Pro Hac Vice (documents 482 and 483) and the United States' Motion to Consolidate its lawsuit into the pending litigation (document 2).[10] The court also denied as moot Defendant Wetherell's and Margolis' Motions to Quash Subpoena (documents 485 and 487), and denied Plaintiffs' Motion to Strike Proposed State Senate Redistricting Plans Submitted by Margolis and Wetherell (document

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> Pensacola-Escambia County area and the Dade County area. Because these and other legislative choices did not directly impact upon the five covered counties, they cannot be the basis of withholding preclearance of either plan.

Exhibit 1 to document 447 at 6.

Because the Department's "preclearance" jurisdiction is limited to reviewing Florida's five covered counties, it could not reject either the House or Senate plan on the basis that it did not comply with Section 2 of the Voting Rights Act.

[8] This motion was granted by document 460. In its order dated May 13, 1992, the Florida Supreme Court indicated its willingness to entertain Section 2 challenges to the then-validated plan, but plaintiffs have elected to assert their Section 2 claims in this federal forum.

[9] The court GRANTED the motions contained in documents 71, 204, 381, and 424 and DENIED the motions contained in documents, 366, 368, 372, 386, 443, 445, 446, 450, 452, 453, 455, 459, 477, 481, 499 and 503.

[10] By order dated June 27, 1992 and pursuant to Title 28, United States Code, Section 2284, the Chief Judge of the Eleventh Circuit Court of Appeals convened a three-judge panel consisting of the same three judges.

478). The court then turned to the Florida Senate redistricting plan.

The DOJ indicated its belief that the Florida Supreme Court's modification to the Hillsborough County area Senate districts satisfied its previous objection. The Department stated that a preclearance decision would be made within days of the State's submission of the plan to the Department. The same day, this court imposed the Florida Supreme Court plan as its own plan for section 5 purposes. *See* Tr. I-37. The effect of this was to eliminate the need for preclearance. "Plans imposed by court order are not subject to the [preclearance] requirements of § 5." *Wise v. Lipscomb*, 437 U.S. 541 (1978); *see also State of Texas v. United States of America*, 785 F.Supp. 201, 205 (D.D.C. 1992). At the same time, however, the court indicated its intention to entertain Section 2 challenges on both the Florida Senate and Florida House plans.[11]

In Count VIII of the *De Grandy* plaintiffs' fourth amended complaint,[12] plaintiffs allege that both the Florida House and Senate redistricting plans encompassed in joint resolution of legislative reapportionment, SJR 2-G, violate Section 2 of the Voting Rights Act, Title 41, United States Code, Section 1973, *et. seq.* *See* document 506 at 51-60. Specifically, plaintiffs contend that "[t]he joint resolution of apportionment . . . unlawfully frag-

[11] It was our intent to immediately conduct a section 2 review of the Senate plan and we adopted the plan despite its potential section 2 problems. Because the plan adopted by the Florida Supreme Court could not be a valid plan subject to a section 2 challenge until after it was precleared by the Department of Justice, we adopted the Supreme Court plan as our own plan in order to give the parties a formal plan to challenge.

[12] In a ruling from the bench on June 27, 1992, the court permitted plaintiffs to once again amend their complaint. Both the Justice Department and the NAACP plaintiffs allege section 2 violations; *the De Grandy* fourth amended complaint, however, is more precise.

ments cohesive minority communities and otherwise impermissibly submerges their right to vote and to participate in the electoral process. Document 506 at 52 ¶ 137. Plaintiffs attack both the Dade County districts in the Senate plan and the Dade and Escambia County districts in the House plan as violative of Section 2,[13] alleging that

> The African-American population in Escambia County was split into two districts, one of 30% black population and one of 14% black population. SJR 2-G deliberately fractures Escambia County's African-American population in order to protect white, incumbent representative, Speaker-designate Bo Johnson. Alternative plans encapsulate the black population in a relatively compact, cohesive, 40% black community of interest.
>
> * * * *
>
> In Dade County, black citizens were fragmented in District 118 and District 119. Many African-American seats were also packed with many Hispanic citizens which dilutes the ability of African-Americans to elect candidates of choice.
>
> * * * *

[13] In their fourth amended complaint, plaintiffs also attacked several other House districts. With court approval, plaintiffs later dismissed their Section 2 challenges to districts 8 (Leon, Gadsden, Calhoun, Jackson, and Liberty Counties), 22 (Alachua, Marion, Levy, Putnam, St. Johns Counties), 28 (Volusia, Seminole, Brevard, Counties), 45 (Polk and Hillsborough Counties), 55 (Pinellas County), and 82 (Charlotte, DeSoto, Highlands, Indian River, Lee, Okeechobee, St. Lucie Counties). Although plaintiffs' motion indicates that this dismissal would be without prejudice, the court did not state whether the dismissal would preclude plaintiffs filing a subsequent lawsuit challenging the dismissed districts.

Because plaintiffs concede that a majority African-American district cannot be drawn in Escambia County, their challenge is not really based on Section 2 of the Voting Rights Act; rather, plaintiffs' allegations that the district lines were drawn with a discriminatory purpose is based on the Fifteenth Amendment to the United States Constitution.

Hispanic voters are packed in Districts 110 (82.1%), 111 (75.7%), and 114 (77.5%) and further submerges Hispanic voters in black minority districts, specifically, District 103 (62% black, 27.8% Hispanic), District 109 (63.0% black, 34.5% Hispanic), and District 118 (34.5% black, 27.1% Hispanic). Less egregious examples of packing, but still having the same dilutionary effect, are District 104 (57.8% black, 16.1% Hispanic), Anglo District 105 (19.2% Hispanic), Anglo District 106 (32.3% Hispanic), District 108 (66.2% black, 16.0% Hispanic). SJR 2-G appears to purposefully pack, fracture and submerge Hispanic population deliberately to dilute Hispanic voting strength;

Nine Hispanic-American majority districts were created in SJR 2-G; however, other plans submitted to the Legislature show that eleven majority-Hispanic-American seats can be created in the Dade County area. This dilution of Hispanic voting strength is accomplished by the aforementioned packing, fracturing, and submergence with the intent and purpose of protecting white incumbents;

* * * *

With respect to the plan for apportionment for the Florida State Senate, . . . the redistricting plan enacted by the State of Florida creates 7 Senate districts in the Dade County area. The state's plan fragments the Hispanic population concentrations such that Hispanics comprise a majority of the voting age population only in three districts. The racial and ethnic population concentrations existing in the Dade County area are such that, if the Dade County area of the state is divided into equally populated legislative districts which respect communities of interest and follow other non-discriminatory plan-drawing criteria, Hispanics would constitute a significant voting age majority of the population in one additional Senate district in Dade County.

Document 506 at ¶¶ 141(a), (i); 142(a), (b). The complaint also alleges that the creation of these districts was both intentional and willful, and for the purpose of preserving white incumbent legislators and discriminating against African-American and Hispanic candidates and electorate. Document 506 at ¶ 145.

The entire trial lasted five days—from Friday, June 26, 1992 through Wednesday, July 1, 1992, excluding Sunday, June 28, 1992. The court first heard testimony concerning the Senate Plan. At the close of plaintiffs' case in chief, defendants orally moved for a directed verdict, which was denied by the court. Tr. III-216. The Senate defendants then presented their case. The court next turned to the attack upon the Dade County portion of the House plan.

The parties advised the court that they were attempting to settle the Escambia portion of the lawsuit by redrawing the Escambia County House districts. After hearing the testimony of one of plaintiffs' Escambia County witnesses, the court ruled from the bench that the "plaintiffs [had] established a prima facie case on the constitutional violation in the Escambia County area of Florida." Tr. IV-18. Before the close of plaintiffs' prima facie case, the court was notified that the parties, except for plaintiff-intervenor Darryl Reaves, had reached a settlement agreement as to the Escambia County House districts. Upon the granting of the House defendants' oral motion to dismiss Reaves for lack of standing as to Escambia County,[14] Tr. VIII-59, the court considered and approved the proposed consent judgment (document 548). *See* Tr. VIII-94.

On July 1, 1992, at the close of all testimony and oral argument, the court ruled from the bench that

> the plaintiffs have shown a fourth Hispanic district can be drawn in accordance with the *Gingles* stand-

[14] Reaves is a resident of Dade County.

> ard, but the plaintiffs [15] have failed to prove that a fourth Hispanic district can be drawn without creating a regressive effect upon Afro-American voters in Dade County and South Florida. . . . Consequently, under Supreme Court precedent, this court must give deference to the state policy as expressed in the Florida plan as validated by the Florida Supreme Court.

Tr. VIII-53. The court denied plaintiffs' oral motion for reconsideration. Tr. VIII-61.

After hearing closing argument as to the Dade County portion of the Florida House plan, the court ruled from the bench that "under the totality of the circumstances, the plaintiffs have shown a violation of Section 2 in that the plaintiffs have shown that more than nine Hispanic districts may be drawn without having or creating a regressive effect upon black voters in South Florida and in Dade County." Tr. VIII-83. The court indicated its intention to immediately proceed into the remedy phase of this case. The court later imposed the Modified De Grandy Plan as its own plan. Tr. VIII at 160. On July 2, 1992, the court entered judgment as to the 1922 Florida Senate Plan (document 553) and as to the 1992 Florida House Plan (document 554), the latter supplemented on July 6, 1992 (document 559). Following the trial, the House and Executive defendants moved for reconsideration (documents 550 and 556). These motions were denied (documents 555 and 560). The House defendants also moved for reconsideration, rehearing and for a stay (document 561) the court denied (document 571).

This opinion memorializes and explains the court's rationale for its July 2, 1992 rulings.

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[15] The court specifically noted that its ruling applied to *all* plaintiffs and not just the De Grandy plaintiffs. Tr. VIII at 60.

II. FINDINGS OF FACTS AND CONCLUSIONS OF LAW [16]

A. Section 2 of the Voting Rights Act

As amended and in pertinent part, Section 2 of the Voting Rights Act of 1965 provides as follows:

> (a) No voting qualification or prequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one "circumstance" which may be considered, provided that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973.

As originally passed, Congress intended for the language of Section 2 to parallel the language of the Fifteenth Amendment. *City of Mobile v. Bolden*, 446 U.S.

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[16] Any finding of fact which may be a conclusion of law shall be considered a conclusion of law. Conversely, a conclusion of law which may be a finding of fact shall be so considered.

55, 60-61 (1980) (plurality opinion). Because Section 2 paralleled the Fifteenth Amendment, the plurality of the Supreme Court held that a plaintiff was required to prove discriminatory intent to establish a violation of Section 2. *Bolden*, 447 U.S. at 62, 71. In response to the Supreme Court's ruling in *Bolden*, Congress amended section 2 in 1982 to include a "results" or "effects" test to determine whether racial vote dilution has occurred. *See* Senate Report at 27; *Thornburg v. Gingles*, 478 U.S. 30, 35 (1986); *see also Burton v. Sheheen*, No. 3:91-2983-1, 1992 U.S. Dist. LEXIS 7461, slip op. at 32-36 (D.S.C. 1992).

In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court received its first opportunity to review the 1982 Section 2 amendments. *Gingles* involved a Section 2 challenge to the use of multi-member districts in North Carolina. The Court held that "[t]he essence of a Section 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Gingles*, 478 U.S. at 47. Additionally, the law is clear that Section 2 extends coverage to "language minorities" including Hispanics. *Chisom v. Roemer*, 111 S.Ct. 2354, 2362 & n.18 (1991); *Hastert v. State Bd. of Elections*, 777 F.Supp. 634, 648 (N.D.Ill. 1991).

In determining whether a Section 2 violation has occurred, "a court must assess the impact of the contested structure or practice on minority electoral opportunities 'on the basis of objective factors.'" *Gingles*, 478 U.S. at 44 (quoting Senate Report at 27). The Supreme Court in *Gingles* reiterated the list of "typical" factors which may be relevant to, and probative of, a Section 2 claim as set forth in the Senate Report. These "Senate factors" include:

> 1. The extent of any history of official discrimination in the state or political subdivision that

> touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
>
> 2. the extent to which voting in the election of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

> Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group. And whether the policy underlying the state or political subdivision's use of

> such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

See Senate Report at 206-07 (citing *White v. Regester*, 412 U.S. 755 (1973); *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973)).

This list is not exhaustive—it is not required that any number of the factors be proved and other factors may be relevant. *Gingles*, 478 U.S. at 45. The Court did note, however, that "the most important Senate Report factors bearing on Section 2 challenges to multi-member districts are the 'extent to which minority group members have been elected to public office in the jurisdiction' and the 'extent to which voting in the elections of the state or political subdivision is racially polarized.'" *Gingles*, 478 U.S. at 49 n.15 (quoting U.S.C.C.A.N. 1982 at 206).

The Court, however, set forth the following important limitations on the extent to which these factors establish liability under Section 2:

> [W]hile many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances, the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice.

Gingles, 478 U.S. at 48.

The Court then listed three circumstances which "are necessary preconditions for multi-member districts to operate to impair minority voters' ability to elect representatives of their choice." *Gingles*, 478 U.S. at 49-50. These preconditions are:

> 1) the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single member district;

> 2) the minority group must be able to show that it is politically cohesive
>
> 3) the minority group must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate.

The purpose of the first requirement is to determine whether "minority voters [would] possess the *potential* to elect representatives in the absence of the challenged structure or practice." *Gingles*, 478 U.S. at 50 n.17. As the *Gingles* court noted, because a minority population which is spread evenly throughout the district "cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure," they cannot maintain that the multimember electoral system itself dilutes the voting strength of the minority voters. *Gingles*, 478 U.S. at 50 n.17.

Thus far, the Supreme Court has not spoken as to whether the *Gingles* analysis applies when a court is faced with a challenge to single member districts. District courts are divided on this issue with the courts in *Armour v. Ohio*, 775 F.Supp. 1044 (N.D. Ohio 1991), *Illinois Legislative Redistricting Commission v. LaPaille*, 782 F.Supp. 1272 (N.D. Ill. 1992), and *Emison v. Growe*, 782 F.Supp. 427 (D. Minn. 1992), *jur. noted*, 112 S.Ct. 1557, *motion gr.* 1992 U.S. LEXIS 3673 (1992) holding that the *Gingles* preconditions do not apply to a single-member district plan, and the courts in *Hastert*, 777 F. Supp. 634, and *DeBaca v. County of San Diego*, No. 91-1282-R(M), 1992 WL 114049 (S.D. Cal. May 11, 1992) holding that they do.[17] We find the approach taken by

[17] Other courts have held that these preconditions also apply to cases involving challenges to single-member districts. *See, e.g., Hastert v. State Bd. of Elections*, 777 F.Supp. 634, 639 (N.D.Ill.

Hastert and *DeBaca* to be persuasive and accordingly turn to examining the *Gingles* factors.

Of course, the effect of proving these three preconditions is an open question in this circuit. In *Solomon v. Liberty County, Florida*, 899 F.2d 1012 (11th Cir. 1990) (en banc), *cert. denied*, 111 S.Ct. 670 (1991) this circuit divided 5-5 as to the legal effect of proving the three *Gingles* factors. Because we find a Section 2 violation under either Judge Kravitch's or Judge Tjoflat's approach, the court need not address the conflict raised in *Solomon*. In other words, this court concludes that the plaintiffs have satisfied each of the three elements *Gingles* requires and that when considered together with the Senate factors, the "totality of the circumstances" show that with respect to Florida's Senate Plan, Hispanic and African-American vote dilution exists in Dade County in violation of § 2 of the Voting Rights Act. Additionally, under the totality of the circumstances, Hispanic vote dilution exists in Dade County under Florida's House Plan.

B. Application of the Gingles Factors

1. *Sufficiently Large and Geographically Compact*

a. Sufficiently Large (Citizenship)

The *Gingles* court stated that in order to State a claim under Section 2, the minority group must show that it is sufficiently large to constitute a majority in a single member district. There is some dispute as to whether the term "majority" as used in *Gingles* refers to a numerical majority or a voting majority, and therefore, whether a court should focus on voting age population or total population as the measure of opportunity within a given

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1991) (three-judge court); *Gunn v. Chickasaw County*, 705 F.Supp. 315, 318 (N.D.Miss. 1989); *McDaniels v. Mehfoud*, 702 F.Supp. 588, 591-92 (E.D.Va. 1988).

district. *See Burton v. Sheheen*, slip op. at 45-6 (*citing McDaniel v. Mehfoud*, 708 F.Supp. 754, 756 (E.D.Va. 1989). Although the *Burton* court noted that the Ninth Circuit has held in *Garza v. County of Los Angeles*, 918 F.2d 763, 774-76 (9th Cir. 1990), *cert. denied*, 111 S.Ct. 681 (1991) that total population may be an adequate measure of minority opportunity,[18] it followed the holdings of both *McDaniel* and *McNeil v. Springfield Park District*, 851 F.2d 937, 944-45 (7th Cir. 1988), *cert. denied*, 490 U.S. 1031 (1989) and concluded that "political opportunity is best measured in terms of minority voting age population." *Burton*, slip op. at 46-7.

This court has previously indicated its view that the VAP is the relevant inquiry as concerns redistricting,[19] and we adopt the rationale and conclusion of the *Burton* court that voting age population (VAP) rather than total population provides a better measure of opportunity within a given district to elect a candidate of choice. Creating districts containing a bare majority VAP of minority groups such as African-Americans and Hispanics, however, will not necessarily remedy a Voting Rights Act violation because, even if minorities constitute fifty percent of the overall population or voting age population in a district, they may not make up fifty percent of the voters. *See Ketchum v. Byrne*, 740 F.2d 1398 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985). The court found in *Ketchum* that "minorities must have something more than a mere majority even of voting age population in order to have a reasonable opportunity to elect a representative of their choice." *Ketchum*, 740 F.2d at 1413. According to the experts, there are four key reasons why a supermajority of minority VAP is necessary to create effective minority districts:

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[18] *But see Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989) (eligible minority *voters*, rather than total minority population, is the appropriate measure of geographical compactness).

[19] Document 411 at 8; Tr. V-40.

> (a) there are typically more *aliens* among minority (especially Hispanic) populations; (b) the *voting age population* is typically a lower proportion of the total population among minorities; (c) *registration* rates are often lower among minorities; and (d) *turnout* rates are often lower among minorities.

Kimball Brace, et al., *Minority Voting Equality: The 65 Percent Rule in Theory and Practice*, 10 Law & Policy 43, 47 (1988) emphasis in the original).

An Hispanic supermajority of the VAP is necessary to account for the fact that many Hispanics are noncitizens and have lower voter registration rates. Document 438 (Congressional Opinion) at 16. This fact is not disputed by any party and is confirmed by the testimony of Dr. Moreno: "[t]he nature of tripartite politics in Dade means that only when Hispanics have a super majority can a Latin candidate win." Affidavit of Dr. Dario Moreno (document 471 at 27). Because the issues in this case were whether a fourth majority Hispanic Senate district and whether a tenth and eleventh majority Hispanic House district could be drawn in Dade County, much of the testimony revolved around what constituted a "supermajority" of Hispanic VAP sufficient to enable Hispanics to elect a candidate of their choice.

Much of the testimony addressed the "65 percent rule" and the impact of citizenship on the voting age population. The 65 percent rule states that "barring exceptional circumstances, a district should contain a black [or Hispanic] population of at least 65 percent (or a voting age population of at least 60 percent) to provide blacks [or Hispanics] with an opportunity to elect a candidate of their choice." Brace, *supra* at 44. The origin of this rule has been traced to the United States Supreme Court case of *United Jewish Organizations, Inc. v. Carey*, 430 U.S. 144, 97 S.Ct. 996 (1977) and has been subsequently addressed in *Ketchum* and *Neal v. Coleburn*, 689 F.Supp. 1426 (E.D.Va. 1988). According to Kimball Brace, the foundation of the rule is suspect:

> Legend has it that the rule came about because someone in the Justice Department took 50 percent and simply added 5 percent to compensate for the higher proportion of Hispanic noncitizens, 5 percent for lower Hispanic voting age population (VAP) and 5 percent for lower Hispanic registration and turnout.

Brace, *supra*, at 44.

In his testimony before the court in *Ketchum*, 740 F.2d at 1415, Mr. Brace stated the rule in a slightly different way:

> [The 65 percent rule] is derived from the 50 percent total population, adding five percent for each of the three factors that are voting age population, because minorities tend to have a lower voting age population, lower registration patterns and a lower turnout pattern.

In accord, Jeffers v. Clinton, 756 F.Supp. 1195, 1199 (E.D.Ark. 1990) (three-judge court), *aff'd*, 111 S. Ct. 662 (1991) (citing *Smith v. Clinton*, 687 F.Supp. 1361, 1362-63 (E.D.Ark. 1988) (three-judge court), *aff'd* 488 U.S. 988 (1988)). Whereas in *Clinton* and *Ketchum*, Mr. Brace would supplement the 50 percent majority figure by five percent *each* for low voter registration and low voter turnout (for a total of ten percent), in his law review article, he would supplement the 50 percent majority figure by five percent *total* for low registration and turnout.

For this and other reasons, the 65 percent rule is not universally accepted by experts and has been modified or rejected by some courts.[20] *See e.g.*, Tr. VI-6 (Dr. Weber). The court in *Rybicki v. State Board of Elections*, 574 F.Supp. 1147, 1149 (N.D.Ill. 1983) stated that:

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[20] While some experts, such as Dr. Arrington, would still attempt to create Hispanic districts containing Hispanic VAPs of 65%, Affidavit of Dr. Arrington (Exhibit to document 474 at 6), other experts, such as Dr. Weber, would not.

> The 65% figure is a general guideline which has been used by the DOJ reapportionment experts and the courts as a measure of the minority population in a district needed for minority voters to have a meaningful opportunity to elect a candidate of their choice. The 65% guideline, which the Supreme Court characterized as "reasonable" in [*Carey*], takes into account the younger median population age and the lower voter registration and turnout of minority citizens.

The court in *Coleburn* noted that

> [T]he general 65% guideline for remedial districts is not a required minimum which the plaintiffs must meet before they can be awarded any relief under § 2 of the Voting Rights Act. Rather, the 65% standard is a *flexible and practical guideline to consider* in fashioning relief for a § 2 violation.

Coleburn, 689 F.Supp. at 1438. The *Coleburn* court noted that the 65% figure is an "approximation of the type of corrective super-majority that may be needed in any particular case" which may have to be "reconsidered and adjusted in light of 'new information' and changing circumstances." *Coleburn*, 689 F.Supp. at 1438 (citing *Ketchum*, 740 F.2d at 1416 nn. 20, 21).

In his affidavit, Dr. Arrington indicates why he and other experts have modified the 65% rule insofar as it affects African-Americans:

> [B]ecause minority communities are now better organized and minority citizens more likely to register and vote than was true in an earlier era [,i]t is not always necessary to have 60% [African-American VAP district] to assure blacks the opportunity to elect candidates of their choice. Although a 60% black VAP is probably still a good goal, 55% black VAP is almost always enough for black citizens to have an opportunity to participate in the political process and elect candidates of their choice.

Affidavit II of Dr. Arrington (exhibit to document 474). The court in *Ketchum* similarly concluded that a 65% supermajority of African-American VAP might no longer be necessary to ensure African-Americans a chance to elect a candidate of their choice and advised district courts to reconsider that figure in light of new information and statistical data:

> For example, we note that the Rev. Jesse Jackson's 1984 presidential candidacy has apparently stimulated black registration and turnout nationally. More specific to Chicago, we understand that the November 1982 gubernatorial election in Illinois and the 1983 Chicago mayoral election indicated a marked increase in black registration and turnout. If these and other elections should demonstrate a significant and consistent change in voting behavior in Chicago applicable to aldermanic elections, there would have to be a corresponding change in redistricting practices and legal standards[.]

Ketchum, 740 F.2d at 1416 n.21.

The testimony in this case also showed that African-Americans turn out in much higher rates than Hispanics. Tr. VI-282-83 (Lisa Handley).

The effectiveness of the African-American majority districts created by the Florida House and Senate plans is not in dispute. The African-American VAP in these districts ranged from 50.96% to 57.24% in the House districts and from 51.7% to 52.5% in the Senate and no party has attempted to argue that these districts would not result in an African-American candidate of choice being elected.[21] Thus we find that a district with an

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[21] There was testimony that because districts containing a simple majority of African-American VAP would elect an African-American candidate of choice, districts containing 57 or 58 percent African-American VAP are designed to waste African-American votes and are, therefore, "packed." Tr. VI-135-36.

African-American majority VAP is an effective district which gives African-Americans a potential for electing candidates of their choice. Accordingly, the NAACP's proposed three African-American districts satisfy the "sufficiently large" requirement. The only question, therefore, is whether the VAP in the proposed one additional Hispanic Senate district and two additional Hispanic House districts would enable Hispanic voters in these districts to elect candidates of choice without impairing the VAPs in the surrounding 3 Hispanic Senate and 9 Hispanic House districts.

Plaintiffs' own witness testified that an Hispanic Senate district containing 55% Hispanic VAP [22] would be "problematic" inasmuch as the VAP would be too low to guarantee that the district would result in the election of the Hispanic candidate of choice. Tr. II-66. Plaintiffs submitted evidence, however, that a district containing 59 percent Hispanic AP *would* enable Hispanics to elect a candidate of choice.[23] Specifically, Dr. Lichtman testified that

> Once the Hispanic concentration reaches a certain point, then all those districts seem to elect Hispanics, but below that given point, none of the districts seem to elect Hispanics. . . . [N]o candidate of choice of the Hispanic . . . has been elected in districts below a 59 percent Hispanic level, and in districts at 59 percent and above, those districts have in every instance elected Hispanic candidates

Tr. III-24. Dr. Lichtman concluded that the Hispanic VAP of 62.1 percent in district 40 provided Hispanics a

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[22] District number 35 in the De Grandy Senate plan.

[23] Javier Souto had repeatedly been reelected in a district containing 59% Hispanic VAP. Tr. II-153.

"realistic opportunity" to elect a candidate of choice in that district.[24] TR III-30, 67-8. Dr. Lichtman's assessment included adjusting for the lower Hispanic voter turnout. Declaration of Dr. Allan J. Lichtman at 2. Although Dr. Lichtman had previously recommended to the Dade County commission that they attempt to create "rock solid" majority Hispanic districts containing 65% Hispanic VAP and "rock solid" majority African-American districts containing 55% African-American VAP, these districts were created "for an entirely different purpose" and he "erred on the side of making sure that [these] seats would be safe." Tr. III-94, III-233. He then reaffirmed his conclusion that "a 62 percent district, while not an absolute lock . . . certainly comes well within the range to provide Hispanic voters a realistic potential to elect candidates of their choice." Tr. III-94.

Defendants, on the other hand, submitted evidence that after accounting for the lower level of citizenship for Hispanics, some of the newly created Hispanic districts would not be effective. In other words, although the Hispanic VAP might indicate that these districts would tend to elect a Hispanic candidate of choice, because the number of Hispanic *citizens* (as opposed to voting age residents) did not constitute a majority, Hispanics would not be able to elect a candidate of choice without relying on a certain percentage of white-crossover votes. According to defendants, the creation of these two additional Hispanic districts would do nothing more than dilute the Hispanic citizen VAP in the remaining nine districts and would result in a decrease in safe Hispanic districts.

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[24] The fourth proposed Hispanic district in the De Grandy plan contained 55% Hispanic VAP. The De Grandy plaintiffs seemed to agree that the Reaves/Brown plan (where the fourth proposed Hispanic district contained 62.1% Hispanic VAP) would be more effective.

In support of their argument, defendants cite De Grove's testimony that after adjusting for citizenship, a district containing 66% Hispanic VAP would have less than 50% Hispanic voters.[25] Tr. VII-26, 29. Defendants further note that citizenship levels vary among Hispanic districts—older, settled Hispanic neighborhoods in the central part of the city will have higher citizenship levels than the neighborhoods which attract more recent arrivals.[26] Tr. VII-49. Whereas according to Dr. Weber, Cubans have a higher citizenship rate than other groups, Tr. V-26, Dr. Moreno testified that due to the high number of recent Hispanic arrivals tending to settle in the South Beach area, there was a "higher level of [Hispanic] non-citizenship and a higher level of [Hispanic] non-registration" in South Beach than in other areas of the city. Tr. II-72-73. Because of this, plaintiffs' proposed 35th Senate district would not be an effective district. Tr. II-72. Plaintiffs responded by noting that their proposed 35th district does not consist entirely of South Beach; rather, the lack of Hispanic citizens in South Beach is balanced by the highly concentrated Hispanic areas of Little Havana.

Defendants also argued that plaintiffs were changing their position. According to defendants, in the congressional redistricting hearings, plaintiffs had contended that a 65% supermajority was necessary for Hispanics to elect a candidate of choice, but now they contend that a 59% or 62% supermajority would allow them to do so. Plain-

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[25] De Grove testified that 32% of the population (Anglo, African-American and Hispanic combined) in Dade County are not citizens. Tr. VII-20-1. Furthermore, he testified that in a hypothetical tract containing a 100% Hispanic population, 55% of the tract's population would be non-citizens. Tr. VII-23.

[26] Although it would be possible to estimate the citizenship levels on a tract by tract basis, the smaller sample size (district versus county) would present statistical problems. Tr. VII-52.

tiffs explained that the reason why plaintiffs advocated such a high VAP for the Hispanic congressional districts was because only two districts were being formed.[27] Because everyone agreed that only two Hispanic districts would be drawn, "it ma[de] sense to hedge your bet and make those districts as Hispanic as possible." Tr. II-115. *See also* Tr. II-67-8. Furthermore, according to Dr. Arrington, a higher minority VAP is necessary for congressional districts to perform than for state legislative districts to perform:

> One would certainly want a somewhat higher black VAP for Congressional districts than for the state legislature because of the greater organization and financing necessary to conduct a campaign at that level.

Arrington Aff. at 6. Although his analysis specifically applies only to African-Americans, there is no reason to suspect it would not also apply to Hispanics.

The court finds that because minority groups have a younger population than majority groups, a supermajority of Hispanic and African-American total population is necessary in order to create an opportunity for those groups to elect candidates of their choice. Because Hispanics communities are characterized by a large number of non citizens and a lower voter registration and turnout rates, a supermajority of Hispanic VAP is necessary to create districts in which Hispanics can elect candidates of choice. Like Hispanics, African-Americans must also constitute a supermajority of the total population of the district in order to elect a candidate of choice; however, because of the recent increases in African-American turnout and registration, a supermajority of

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[27] In our order dated May 29, 1992, however, this court found that a supermajority was necessary. The congressional inquiry was different from the inquiry in this Section 2 case because in the former, we were merely "considering" Section 2 when formulating districts, while here we are presented with a specific challenge to the Florida plan.

African-American VAP is not necessary in order to elect an African-American candidate of choice. Furthermore, although the court finds that both a supermajority of Hispanic and African-American total population and a supermajority of Hispanic VAP are necessary, we decline to express these requirements as exact percentages.

The court further finds that both the Senate districts proposed by plaintiff-intervenors Reaves/Brown/Hargrett and the House districts proposed by the De Grandy plaintiffs would create districts containing effective Hispanic voting majorities. Each of the proposed Senate districts in the Reaves/Brown plan and House districts in the De Grandy plan contains an Hispanic VAP of a least 60%. Because the 65 percent rule already accounts for citizenship, making another adjustment for citizenship would overstate its importance and lead to double counting.[28] Finally, the fact that the plaintiffs themselves are satisfied with these percentages also tends to indicate the effectiveness of the proposed districts. *Coleburn*, 689 F. Supp. at 1438.

b. Geographical Compactness

Plaintiffs have shown that the Dade County's Hispanic population is sufficiently large and geographically compact to constitute a majority in four Senate and eleven

[28] Specifically, the 65 percent rule is premised on the fact that many Hispanics are non-citizens and have lower voter registration and turnouts. If this were not the case, there would be no reason to create districts containing more than 50.1% Hispanic VAP. No one disagrees that because of the lower citizenship and registration/turnout rates, Hispanic districts must contain a supermajority of Hispanic VAP. As previously stated, the 65 percent rule was "arbitrarily" created to account for these problems. Thus, this court must either (1) accept or modify the 65 percent rule or (2) formulate its own methodology for estimating the number of non-citizens reflected in the Hispanic VAP for the various districts. Because each of the districts contains a 60% Hispanic VAP and, therefore, "satisfies" the 65 percent rule, the court need not further inquire as to the Hispanic citizenship levels in each proposed district.

House districts. Hispanics constitute nearly one million persons in the Dade County area, and the county has sufficient concentrations of Hispanic population that can be easily combined to create four Senate and eleven House districts that contain effective Hispanic voting majorities. Hispanics have primarily settled in three sections of Dade: the Little Havana section of the City of Miami, the "West Dade area" comprising the communities of Sweetwater, Village Green, Westchester and West Kendall, and the Northwest section of the county consisting of the cities of Hialeah, Miami Springs, and their surrounding neighborhoods. Moreno Aff at 5-6. There is also a sizeable Hispanic (mostly Mexican) farm-worker community in the Homestead area. Document 471 at 5-6. The Cuban migration patterns went from east to west—as Cubans improved economically, they moved out of the Little Havana area into the suburbs. Tr. III-12. With the exception of the Miami airport, which separates Little Havana from Hialeah and Miami Springs, the Hispanic population forms a compact and contiguous line from Hialeas to Kendall. Tr. III-13. The two most dramatic areas of Hispanic growth in Dade County are along Miami Beach[29] and the Kendall/West Kendall area. Tr. II-14.

The African-American population is also sufficiently large and geographically compact to constitute a majority in two Senate and four House districts in Dade County.[30] The concentrations of the African-American population essentially rest in the north central portion of urbanized Dade County including Opa-Locka, Liberty City and Carol City. Tr. VI-205; II-15-16. There are also pockets of non-Hispanic African-Americans in downtown Miami (including Overtown), Coconut Grove, and Richmond

[29] In 1980, Miami Beach was 30 percent Hispanic. In 1990, it is 49 percent Hispanic. Tr. II-14.

[30] The African-American population can also support another majority district in Broward/Palm Beach counties.

Heights. Tr. II-16; VI-205. Finally, there are African-American neighborhoods in Florida City, Homestead, Couldo, and South Miami. Tr. II-16. The Allapattah area is the border zone between African-American neighborhoods (to the east) and Hispanic areas (to the west). Tr. II-15.

The court in *Hastert v. State Bd. of Elections*, 777 F.Supp. 634 (N.D.Ill. 1991), noted that the *Gingles* geographical compactness requirement is not "an aesthetic concept." *Hastert*, 777 F.Supp. at 649. In that case, most of Chicago/Cook County's Hispanic population was "clustered into two dense enclaves, one on Chicago's near northwest side and the other on the near southwest side," but that the two enclaves were "less than a mile from each other at their closest points." *Hastert*, 777 F.Supp. at 649. Concluding that Chicago's Hispanic community was geographically compact within the meaning of *Gingles* despite the fact that the clusters were separated, the court held that "[t]he separation of clusters is not indicative of the existence of two distinct communities, but appears to have occurred as a result of exogenous physical and institutional barriers." *Hastert*, 777 F.Supp. at 649. Despite the fact the Hispanic community existed in two separate enclaves, the court in *Hastert* concluded that the Chicago/Cook County Hispanic community was sufficiently large and geographically compact to constitute a single district majority. *Hastert*, 777 F.Supp. at 649.

Other courts have echoed the fact that compactness is not an aesthetic concept. In *Dillard v. Baldwin County Board of Education*, 686 F.Supp. 1459, 1465-66 (M.D. Ala. 1988), the court held that "[a]n aesthetic norm, by itself, would be not only unrelated to the legal and social issues presented under Section 2, it would be an unworkable concept, resulting in arbitrary and capricious results, because it offers no guidance as to when it is met." The court in *Wilson v. Eu*, 1 Cal. 4th 707, 823 P.2d 545, 1992 Cal LEXIS 6 (1992), held that the compactness requirement should be used to promote the creation of functional voting districts that allow for effective representation. Specifically, the court held that

> Compactness does not refer to geometric shapes but to the ability of citizens to relate to each other and their representatives and to the ability of representative to relate effectively to their constituency.

Eu, 1992 Cal LEXIS at 20.

In this case, plaintiffs testified that the primary difference between their House plan and the Florida House plan was that the De Grandy House plan attempted to draw the Hispanic districts from north to south while the state drew the districts from east to west. Tr. IV-22. The De Grandy/Reaves/Humphrey plaintiffs and the DOJ argue that Florida's House plan fragments and dilutes the Hispanic vote. Dr. Moreno testified that House District 116 of the Florida plan has an Hispanic VAP of 48 percent. Tr. III-263. Additionally, Dr. Moreno pointed out that the line of District 116 separates heavily Hispanic neighborhoods in District 112 from the rest of the heavily Hispanic Kendall Lakes area and the Kendall area. Tr. III-263-264. Dr. Moreno concluded that the Florida plan erects a barrier between "neighbors making up the same, basically what is the same housing development in Kendall Lakes." Tr. III-264. Additionally, Dr. Moreno testified that in order to protect a white incumbent the Florida plan packs District 114 with an Hispanic VAP of over 78 percent. Tr. III-265. Dr. Moreno also pointed out that in District 102 and District 109 the State repeated the process of fragmenting Hispanic communities. Tr. III-265. This court does not find that the districts drawn by the De Grandy plaintiffs are significantly less geographically compact than those drawn by the state of Florida.[31] Nor are these districts "so un-

[31] As the court in *Jeffers v. Clinton*, 730 F.Supp. 196, 207 (E.D. Ark. 1989), stated:

reasonably irregular, 'bizarre,' or 'uncouth' as to approach obvious gerrymandering." *Coleburn*, 689 F.Supp. at 1437. Furthermore, these districts are "relatively compact and are in line with the configuration of electoral districts that have been approved in other cases." *Coleburn*, 689 F.Supp. at 1437 (*citing Rybicki v. State Board of Elections*, 574 F.Supp. 1082, 1146, 1166-67 (N.D.Ill. 1982) (three judge court)). Finally, the court finds that the districts as drawn in the De Grandy House and Senate plans would create functional voting districts that allow for effective representation.

2. *Political Cohesiveness*

The testimony showed that the Hispanics and African-Americans were each politically cohesive among themselves but were not at all cohesive—and were often at odds—in relation to each other. *See e.g.* Tr. III-35-36; *Meek v. Metropolitan Dade County*, 908 F.2d 1540, 1545-46 (11th Cir. 1990). There is a high degree of tension in Dade County between the African-American population and the Hispanic population. Tr. II-82. Furthermore, while African Americans tend to vote Democratic, Hispanic voters tend to vote Republican. Tr. II-28. The focus of this *Gingles* prong, however, is *not* the joint cohesiveness of two separate minority groups, but rather whether "Hispanics" as a group and/or "African-Americans" as a group are politically cohesive.

a. *Hispanic*

The total Hispanic population of Dade County is 953,407 of which 55 percent is Cuban American. Moreno

[S]ome of the districts [proposed by the plaintiffs] look rather strange, but we do not believe this is fatal to plaintiffs' position. Their alternative districts are not materially stranger in shape than at least some of the districts contained in the present apportionment plan. The one-person, one-vote rule inevitably requires that county lines and natural barriers be crossed in some instances, and that cities and other political and geographic units be split in others.

Aff. at 5. It is estimated that during the 1980's, over 300,000 Latin Americans moved into Dade County. Moreno Aff. at 5. Of these, the Mariel boatlift in 1980 brought in 125,000 Cuban refugees, while Nicaraguans fleeing the Sandinista regime and civil war in 1986 and 1987 numbered approximately 79,000.[32] Tr. II-17. Thousands of Colombians, Peruvians, Hondurans, Guatamalans and Puerto Ricans also melded into Dade's flourishing Hispanic community during the 1980s. According to the 1990 census, non-Cuban Hispanics account for 40.7% of the Hispanic voters in Dade County. Tr. II-86.

The testimony showed that there is a high degree of political cohesiveness among Cuban voters in Dade County although the testimony was less clear about the cohesiveness of non-Cuban Hispanics. Because Dr. Moreno focused on Hispanics as a group and not on the individual Hispanic subgroups, he was not able to form any conclusions as to voting preferences of these individual subgroups.[33] Tr. II-84-91.

In general, "the Hispanics in Dade County are distinguished from Hispanics in the other part of the country by being more conservative and much more Republican." Moreno Aff. at 16. The strong loyalty Cuban-Americans have to the Republican party is seen by their voting patterns in several elections. In 1986, Republican Bob Martinez carried the Hispanic precincts of Dade over his Democratic opponent, receiving 79 percent of the vote. Moreno Aff. at 17. In 1988, President George Bush carried the Hispanic precincts of Dade County with over 85 percent of the vote, while Senator Connie Mack carried the same districts with about 80 percent of the vote. Moreno Aff. at 16. Between 1980 and 1990, Democratic

[32] According to Dr. Moreno, this number is believed to be undercounted by 30,000.

[33] It was unclear whether this data is not available or if the appropriate analysis was not done. Tr. II-112.

party registration among Hispanics in Dade County decreased from 49 to 24 percent, while Republican registration increased from 39 to 68 percent. Moreno Aff. at 18. The Cuban vote stands in stark contrast to that of other Latinos across the United States who have consistently supported the Democratic ticket by two-to-one margins. Moreno Aff. at 18. The cohesiveness of Dade's Hispanic community has also been buttressed by the idealogical affinity of its two largest groups—Nicaraguans and Cubans. Moreno Aff. at 9. These two groups continually work together for a conservative foreign policy agenda. Moreno Aff. at 9; Tr. II-18. Acoerding to Representative Miguel De Grandy,[34]

> There is a union between Cuban-Americans, Nicaraguans and other Central Americans in basic philosophy, first to form policy because . . . they are basically political and not economic migrations, unlike other Hispanic sectors of the United States; they generally have a very conservative, very anti-communist political philosophy on the foreign affairs.

Tr. II-145.

Dade County has a significant amount of Hispanic African-Americans including immigrants from the Dominican Republic and Puerto Rico.[35] Tr. II at 33. Although Dr. Moreno testified that Dominicans identified more with the Hispanic culture than that of the African Americans, the cohesiveness of the 70,000 Dade County Puerto Ricans is less clear. Moreno Aff. at 33. According to Dr. Moreno, Dade County Puerto Ricans seem to identify with the language minority stronger than with the racial minority. Tr. II-33, 84-85. Furthermore, Dade

[34] Mr. De Grandy is not testifying as an expert.

[35] This is significant, for example, in the 36 district where the non-Hispanic African American VAP is 49%, but the total African-American VAP is 52%. Thus, there is approximately three percent Hispanic African-American VAP in this district.

County Puerto Ricans tend to be more Republican and more conservative than their Puerto Rican counterparts in New York.[36] Tr. II-17. Nonetheless, the statistical evidence shows that Puerto Ricans tend to register more as Democrats (50%) than Republicans (40%). Tr. II-142, 179. According to Dr. Moreno, the fact that Puerto Ricans and Cubans do not share the same party affiliation does not mean that the two groups are not cohesive; rather, Hispanic Democrats tend to vote for Hispanic Republicans when they have that opportunity. Tr. II-103.

According to Representative De Grandy, the various Hispanic groups tend to have very similar views in the areas of education, housing, medically needy programs" among others. Tr. II-145-6. Furthermore, the various Hispanic groups tend to have the same political philosophy in areas such as civil rights and discrimination. These groups have united to actively oppose the English only initiative. According to Dr. Moreno, "[t]he fear of language based discrimination [both in the form of English only initiatives and otherwise] has served to unite Dade's Hispanic communities." Moreno Aff. at 7.

We conclude that there is a sufficient degree of political cohesiveness among Hispanics to satisfy the second *Gingles* prong, although there might be differences between the several Hispanic subgroups.

b. African Americans

All of the evidence indicated that Dade County's African-American community is cohesive. Dr. Weber testified that African-Americans are "generally" cohesive and tend to vote for Democratic candidates in general elections. Tr. VI-142. Dr. Lichtman similarly testified that "blacks are politically cohesive, . . . unite in large

[36] In fact, "[a]ll the Hispanic ethnic groups by nationality tend to be more conservative than their counterparts in other large U.S. metropolitan areas." Tr. II-18.

numbers behind candidates of their choice and . . . prefer to elect black candidates when there are elections with black candidates competing against candidates of other races." Tr. III-35. Both this court and Florida Supreme Court Chief Justice Leander Shaw have previously held that the approximately 590,000 African-American residents in the Broward/Dade/Monroe county area [37] are politically cohesive [38]:

> Black voters in Florida generally vote as a cohesive racial block for the black candidate when there is a black versus white choice on the ballot for a given office.

Document 411 (Report of Special Master) at 23. *See also In re SJR 2G*, No. 79,674 at 34-37 (Shaw, C.J., dissenting); document 388 (Report of Independent Expert to Special Master) at ¶ 10. Furthermore, the testimony received in the legislative hearings underscore this conclusion. Accordingly, we conclude that both African-Americans and Hispanics are politically cohesive groups within the meaning of the second *Gingles* prong.

3. *White Block Voting*

Dr. Allan J. Lichtman,[39] defines "racially polarized voting" as "the extent to which members of distinct racial or ethnic groups support different candidates of their choice." Affidavit of Dr. Lichtman, Government Exhibit 46 at ¶ 4; Tr. III-13. Racially polarized voting can be

[37] Affidavit of Thomas B. Hoeffler, document 472 at 8.

[38] African-American registration in Dade County is 90 percent Democrat. Moreno Aff. at 19. "The antipathy of Black voters to Republican candidates is illustrated in recent presidential and statewide races [where] no GOP candidate received more than 12 percent of the Black vote." *Id.* African-Americans also vote heavily for Democrats in state legislative elections. *Id.*

[39] Dr. Lichtman is a professor of history and formerly Associate Dean of the College of Arts and Sciences at The American University in Washington, D.C.

subdivided into two parts: minority cohesion, which is the extent to which minority voters support candidates of their choice, and white bloc voting, which is the extent to which whites support different candidates. Government Exhibit 46 at ¶ 4. According to Dr. Lichtman, "[r]acially polarized voting is politically significant if, under a given electoral system, it impedes the opportunities for minority voters to elect candidates of their choice." Government Exhibit 46 at ¶ 4.

There was a substantial amount of testimony—both during the Congressional redistricting hearings and the state legislative hearings—that voting in Dade County is racially polarized. The court notes Chief Justice Leander Shaw's conclusion in *In re Constitutionality of Senate Joint Resolution 2G Special Apportionment Session 1992*, No. 79-674, slip op. at 34-37 (Fla. May 13, 1992) (Shaw, C.J., dissenting) that "[t]he results of Florida's legislative elections over the past ten years established the presence of racially polarized voting." Likewise, Dr. Arrington stated that "most elections involving both Afro-Americans and Hispanics are racially polarized." Arrington Aff. at 1. Furthermore, according to Dr. Lichtman

> The results reported in Table 1 [exhibit to government exhibit 46] show a clear pattern of racially polarized voting, Hispanic cohesion, and white bloc voting. It also shows that black voters united with white voters in opposition to Hispanic candidates for Senate and House positions [40] . . . . The results re-

[40] "In every election studied, Hispanics voted for Hispanic candidates in greater proportion than either whites or blacks. The results reported in Table 1 show a pattern of strong political cohesion. By generally overwhelming majorities, Hispanic voters preferred to elect Hispanic candidates to state legislative positions. In 11 of 13 elections for the Senate of House, ecological regression results show that more than 75 percent of Hispanic voters opted for the Hispanic candidates." Government Exhibit 46 at ¶ 6.

> ported in Table 1 likewise show a pattern of strong bloc voting by whites for non-Hispanic candidates [. . . and] indicate that blacks joined with whites in opposing Hispanic Senate and House candidates. . . . These findings of Hispanic cohesion and white bloc voting are supported by the analyses of additional local elections in Dade County.

Lichtman Aff. at ¶¶ 6-9; *See also* Tr. III-18-19.

Furthermore,

> The high degree of racially polarized voting documented for legislative elections in Dade County indicates that Hispanic voters would have an opportunity to elect candidates of their choice only in Districts with Hispanic voting-age majorities. Otherwise white bloc voting would usually be sufficient to defeat the candidate of choice of Hispanic voters.

Lichtman Affidavit at ¶ 10. Finally, the reports prepared by consultants for the state also recognize that because of the strong polarization between Hispanics and non-Hispanics in Dade County, opportunities for Hispanics to elect candidates of their choice are impeded. Lichtman Aff. at ¶ 11.

According to Dr. Moreno, Dade County is profoundly divided by the competing interests of three distinct and separate ethnic groups—African American, Hispanic, and Non-Hispanic White—each of whom has different social and economic interests. Moreno Aff. at 3. According to Dr. Moreno, "[t]he division of Dade along ethnic lines has made Miami the contemporary symbol of racial upheaval in America." Moreno Aff. at 3. There is a "high degree of tension in Dade County between the Afro-American population and the Hispanic population." Tr. II-82. Furthermore, the division of the three major ethnic groups has led to the development of tripartite politics in Miami; that is, ethnic factors between the three communities predominate over all other factors in Dade politics.

According to Dr. Moreno, "[m]inorities are usually only able to elect their candidates when they are firmly in the majority." Moreno Aff at 20. Furthermore, "white candidates are aided by the deep cleavages between Republican Hispanics and Democratic Blacks." Moreno Aff. at 3. According to Dr. Moreno, there are four types of racially polarized elections in Miami:

> First, [there] are races featuring a Hispanic candidate versus a White candidate with Black[s] supporting the White candidate; second, a Black candidate versus a White candidate with Hispanic voters supporting the White candidate; third, a Black candidate versus a Hispanic candidate with White voters holding the balance of power and finally the[re] are races between two candidates of the same ethnic group in which voters from the other two group[s] support the least ethnic of the two candidates.

Moreno Aff. at 21.

Dr. Moreno cites specific examples of recent races in which ethnic factors predominated over all others including the congressional race between Gerald Richman and Ileana Ros-Lehtinen where "[t]he campaign strategies of both campaigns were based purely on ethnic calculations." Moreno Aff. at 23. Cuban-Americans, offended by the perceived racism of Richman, voted for Ros-Lehtinen by a margin of 88 to 12 percent. Although Richman carried all of the other blocs of voters—Jewish, Anglo, and Black—because these voters represented only 47 percent of the electorate, Richman lost the race. According to Dr. Moreno, "Ros-Lehtinen won simply because more Cubans voted and almost all of them voted for Ros-Lehtinen." Moreno Aff. at 24.

In 1990, two Hispanic incumbents almost lost their seats in the state legislature to non-Hispanic White chal-

lengers. Moreno Aff. at 26-27. Javier Souto was barely re-elected to the State Senate from the 40th district when Tom Easterly won 74 percent of the non-Hispanic White vote and 92 percent of the Black vote. [41] Moreno Aff. at 26-27. Souto was able to defeat his Anglo opponent by winning over 80 percent of the Hispanic vote. State Representative Al Gutman also nearly lost his 105 district seat to a non-Hispanic White candidate. His challenger, Steve Leifman, won 42 percent of the vote in this heavily Hispanic district by carrying two-thirds of the non-Hispanic White vote and 83 percent of the African-American vote. Gutman survived by winning 92 percent of the Hispanic vote. In another race, Hispanic challenger Orlando Cruz was earily defeated by incumbent Art Simon in an ethnically polarized election in the 116th District despite the fact that Cruz carried 77 percent of the Latin vote. Moreno Aff. at 26-27; Tr. II-109. According to Dr. Moreno, "this pattern of ethnic polarized voting against Hispanics was not restricted to the 1990 elections." Moreno Aff. at 27. Rather, "[t]he pattern of bloc voting by non-Latin White and Blacks against Hispanics is found in elections at all levels against both Latin challengers and incumbents." Moreno Aff. at 27.

African-Americans have also been the victims of block voting. According to Dr. Moreno, "Black candidates faced with a White-Hispanic coalition and lacking adequate finances have largely been limited to running in the three state House districts (106, 107, 108) and in the one state Senate district (36) where Blacks comprised an overwhelming majority." Moreno Aff. at 28. In 1986, Bob Starks, a White Republican, barely beat Nathaniel Edmond, an African-American Democrat in the general election for state House district 118. Despite the fact that Democrats out-registered Republicans in this district 21,202 to 9,968, Stark won by carrying nearly all of the

[41] In his live testimony, Dr. Moreno stated that even fewer African-Americans crossed over (3.7%). Tr. II-95.

White votes in the district. This occurred despite the fact that Edmond had the support of almost all of the African-American voters.[42] In 1990, Darryl Jones, an African-American Democrat won the election despite losing the White vote. Jones beat John Minchew 64 to 36 percent because more African-Americans turned out at the polls and he carried enough of the White vote (24 percent) to put him over the top. Moreno Aff. at 29. According to Dr. Moreno, block voting is not limited to legislative races, for "Black[] candidates have also fared poorly in seeking county-wide office." Moreno Aff. at 29.

4. *Additional Findings*

The history of discrimination against African-Americans in Florida was addressed in depth in our order of May 29, 1992 and will not be restated here. *See* document 438 at 2-3. The court also finds sufficient evidence of language based discrimination against Dade County Hispanics. According to Dr. Moreno, "[t]he fear of an anti-Spanish backlash has been reinforced by English only initiatives, at both the county and state level, which seem to be specifically aimed at Miami's Latin population." Moreno Aff. at 7. In his affidavit, Dr. Moreno also cites specific examples of language based discrimination: including the suspension of a supermarket clerk for speaking Spanish in front of customers and the refusal of a personnel agency to refer people with foreign accents to job openings at a Miami bank. Moreno Aff. at 8-9.

The record clearly established that Florida's minorities have borne the social, economic and political effects of this discrimination. This is true despite the fact that Cubans have fared relatively well in South Florida. Although

[42] Although blacks comprise only 29 percent of the population of this district, they exert greater influence because most of the Hispanics in this district are not United States citizens. Thus, African-Americans represent over one third of the registered voters in this district.

Miami has a Cuban mayor and South Florida is the home of three Cuban state senators, Tr. II-101, language based discrimination still exists in South Florida. While the witnesses disagreed as to whether Hispanics of African-Americans bore more of the brunt of discrimination, everyone agreed that both groups had suffered.[43] In fact, as a result of this discrimination, the United States DOJ must preclear five Florida counties pursuant to Section 5 of the Voting Rights Act, as amended. § 1973 *et seq.* Those counties are Collier, Hardee, Hendry, Hillsborough and Monroe.[44]

In this case, the DOJ and the De Grandy/Reaves/Humphrey plaintiffs have established that Florida's Senate reapportionment plan dilutes the voting strength of Hispanics in Dade County and the surrounding areas. Additionally, plaintiff NAACP has established that Florida's Senate reapportionment plan dilutes the voting

[43] Representative Burke felt that African-Americans have suffered greater discrimination than Hispanics. Tr. VII-126. Dr. Weber similarly testified that "African-Americans have had greater difficulty than Hispanic Americans" in achieving political empowerment in South Florida. Tr. VI-145. Likewise, Dr. Moreno testified that

> Blacks are also the most disadvantaged of the three major ethnic groups that live in the Greater Miami area. In all social-economic indicators[,] Afro-Americans are the worst off of Dade [C]ounty's citizens.
>
> . . . Miami's Black community facing discrimination, poverty, and not participating in local decision-making has erupted in violence four times during the 1980's.

Moreno Aff. at 11-12. Plaintiff Darryl Reaves testified that there was discrimination against both Cubans and African-Americans and could not state which group has been most victimized. Tr. V-132.

[44] These five counties are subject to the Section 5 preclearance requirement because they provided election information only in the English language when more than five percent of the voting age citizens were Spanish-speaking, and fewer than fifty percent of them were registered to vote or voted in the 1972 Presidential Election. *See* 41 Fed.Reg. 34329 (August 13, 1976); 40 Fed. Reg.—— (September 23, 1975).

strength of African-Americans in Dade County and the surrounding areas. With respect to Florida's House reapportionment plan, all of the parties have agreed that Florida's plan fragments the African-American community in Escambia County.[45] The DOJ and the De Grandy/Reaves/Humphrey plaintiffs have also established that Florida's House reapportionment plan dilutes the voting strength of Hispanics in Dade County. We must now fashion a remedy.

III. REMEDY

A. The Senate

Florida's new Senate plan (Plan 330) creates five minority-majority districts of which two have African-American voting age population (VAP) majorities and three have Hispanic VAP majorities. The three Hispanic VAP majority districts and one of the African-American VAP majority districts are contained wholly within Dade County. The other African-American VAP majority district is contained in the South Florida counties of Broward and Palm Beach. In the three Hispanic VAP majority districts, Hispanics constitute the following percentages of the VAP: (1) District 34—66.3 percent; (2) District 37—64.3 percent; and (3) District 39—76.1 percent. African-Americans constitute 52.5 percent of the VAP of District [illegible] in Dade County, and 51.7 percent of the VAP in the Broward/Palm Beach district, District 30. The Senate reapportionment plan creates seven Dade County districts of which five districts are wholly within

[45] All plaintiffs and the defendants agreed that voting is racially polarized in Escambia County, and that the African-American population in Escambia County is large, compact, and concentrated in the Pensacola area. Additionally, the parties agreed that Florida's House plan split the politically cohesive community in Escambia County into several districts. Thus, the parties agreed to a consent judgment which formulated new House districts in the Escambia County area uniting the African-American population of the Pensacola area. (Doc. 548).

Dade County and two additional districts are comprised of portions of Dade County and the surrounding areas.

The DOJ and the De Grandy/Reaves/Humphrey plaintiffs take exception to Florida's Senate reapportionment plan as it pertains to Dade County because the state's proposed plan fragments the Hispanic population concentrations such that Hispanics comprise a majority of the VAP only in three districts. Specifically, the DOJ and the De Grandy/Reaves/Humphrey plaintiffs point out that as a result of Florida's Senate reapportionment plan 28.55 percent of the Hispanic population of Dade County will reside in state Senate districts that Hispanics will have no possibility of winning. *See* Moreno Aff. at 32-38. The DOJ and the De Grandy/Reaves/Humphrey plaintiffs contend that if the racial and ethnic population concentrations existing in the Dade County area are divided into equally populated Senate districts which respect communities of interest and follow other non-discriminatory plan drawing criteria, Hispanics would constitute a significant voting age majority of the population in an additional Senate district. In our order dealing with congressional redistricting, we held that "the voting age population (VAP) is the relevant number to be used in determining whether minorities in a particular district will be able to elect a candidate of their choice." *De Grandy v. Wetherell*, Nos. TCA 92-40015-WS, 92-40131-WS, slip op. at 16 (N.D. Fla. May 29, 1992) (citing *Solomon*, 899 F.2d at 1018. The court in *Ketchum* explained that VAP is the best measure of minority voting strength because age is a legal prerequisite to voting and minority groups generally have a younger population which comprise a large proportion of the individuals who are ineligible to vote. *Ketchum*, 740 F.2d at 1412-1413. Because minority groups generally have a younger population than majority groups, the use of VAP as the relevant number for creating minority-majority districts requires that minority groups constitute a supermajority of the total population

of an electoral district. *See Ketchum*, 740 F.2d at 1412-1413.

Additionally, our congressional order held that "because Hispanic communities are characterized by a large number of non-citizens and lower voter registration rates, a supermajority of the VAP is necessary to create districts in which Hispanics can elect candidates of their choice." *De Grandy*, Nos. TCA 92-40015-WS, 92-40131-WS, slip op. at 16. In determining whether a fourth district can be created in which Hispanics constitute a supermajority of the VAP, we must consider "emerging changes in sociological and electoral characteristics if minority groups and broad changes in political attitudes." *Ketchum*, 740 F.2d at 1416. These changes may alter, or eliminate the need for a supermajority corrective figure. *Ketchum*, 740 F.2d at 1416.

In this case, the DOJ and the De Grandy/Reaves/Humphrey plaintiffs have established that Hispanics can elect candidates of their choice in Dade County and its surrounding areas when the Hispanics constitute at least 59 percent of an electoral district's VAP. Dr. Lichtman testified that in Dade County and its surrounding areas "[n]o Hispanic candidates have been elected in districts below a 59 percent Hispanic level, and in districts at 59 percent and above, those districts have in every instance elected Hispanic candidates." Tr. III-24. Based on the record as a whole, we find that the electoral characteristics of Hispanics in Dade County indicate that 60 percent is an appropriate guideline for determining if a fourth Hispanic VAP supermajority district can be created in the Dade County area. We note, however, that in areas with high concentrations of recent Hispanic arrivals, such as the South Beach area of Miami, an effective VAP supermajority district must have a VAP higher than our 60 percent guideline level. Tr. II-55.

The De Grandy/Reaves/Humphrey plaintiffs have established that four geographically compact districts can

be drawn in which Hispanics in Dade County would have the potential to elect candidates of their choice. Plaintiff Reaves submitted Plan 180 which creates four Hispanic VAP supermajority districts. In Plan 180's four majority Hispanic districts, Hispanics constitute the following percentages of the VAP: (1) District 33—66.8 percent; (2) District 34—65.0 percent; (3) District 35—65.7 percent; and (4) District 40—62.1 percent.[46] Although this plan remedies the dilution of the Hispanic vote, we must examine the extent to which the plan addresses the African-Americans' vote dilution claim.

Plan 180, like Florida's Senate plan, creates two African-American VAP majority districts. Nevertheless, these two districts do not fully address the vote dilution claim of African-Americans. The NAACP takes exception to Florida's Senate reaapportionment plan as it pertains to Dade County and the surrounding areas because the state's proposed plan fragments the African-American population concentrations such that African-Americans comprise a majority of the VAP in only two South Florida districts. Specifically, the NAACP contends that if the racial and ethnic population concentrations existing in the Dade County area are divided into equally populated Senate districts which respect communities of interest and follow other non-discriminatory plan drawing

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[46] Plaintiff De Grandy, on the other hand, submitted plan 275 which also contains four Hispanic voting age population majority districts. In plan 275's majority Hispanic districts, Hispanics constitute the following percentages of the voting age population: (1) District 33—71.5%; (2) District 34—66.1%; (3) District 35—55.0%; and (4) District 40—66.2 (Plan 275). District 35 in this plan falls short of our 60 percent guideline and De Grandy's own expert, Dr. Moreno, admitted that district 35 was "problematic" because its 55 percent VAP was probably too low for Hispanics to be able to elect candidates of their choice. Tr. II-66. Additionally, this district includes the South Beach area of Miami which contains a large number of recent arrivals who are non-citizens. Tr. IV-158. This additional fact makes this 55 percent district unacceptable and we reject plan 275 as a viable option.

criteria, African-Americans would constitute a voting age majority of the population in an additional Senate district.

Like Hispanics, African-Americans must also constitute a supermajority of the total population of a district in order to be able to elect candidates of their choice due to a young population. *See Ketchum*, 740 F.2d at 1412-1413. African-Americans, however, may not need a supermajority of the VAP of a district because the minority group has experienced changes in its electoral characteristics. We take judicial notice of the fact that Jesse Jackson's 1984 and 1988 presidential campaigns stimulated African-American registration and turn-out nationally. *See Ketchum*, 740 F.2d at 1416 n.21. Thus, we find that because of changing African-American electoral characteristics, a simple majority of the VAP is an appropriate guideline for determining if a third African-American majority VAP district can be created in the Dade County area.

The NAACP has established that three geographically compact districts can be drawn in which African-Americans in Dade County would constitute a majority of the VAP and have the potential to elect candidates of their choice. The NAACP submitted a plan which creates three African-American VAP majority districts. Two of the African-American VAP majority districts consist of Dade County area residents with one district spilling over into areas of Broward County. The other South Florida African-American VAP majority district is in the Broward/Palm Beach area and is comparable to the Broward/Palm Beach district in Florida's Senate reapportionment plan. In the NAACP plan's three African-American VAP majority districts, African-Americans constitute the following percentages of the VAP: (1) District 39 in Dade—51.7 percent; (2) District 37 in Dade and Broward—53.6 percent; and (3) District 35 in Broward and Palm Beach—51.6 percent. This plan's creation of three African-American VAP majority dis-

tricts remedies the dilution of the African-American vote in the South Florida, however, it fails to address the vote dilution claim of Hispanics in Dade County because the plan only creates three Hispanic VAP supermajority districts.

This court is faced with two independent, viable Section 2 claims in South Florida and our remedy must address both of those claims. An ideal solution would be to order the drawing of four supermajority VAP Hispanic districts and three majority VAP African-American districts in South Florida. The evidence in this case, however, established that the ideal remedy for the Section 2 violations in this case is not a viable option. During the course of the examination of John Gutherie, Staff Director of the Senate Committee on Reapportionment, the court inquired about the possibility of creating a plan containing four Hispanic and three African-American districts.

> JUDGE HATCHETT: Yes, he has the answer. I have a question, though. From all of your experience working in South Florida, is it possible to draw four VAP majority Hispanic districts and three majority black districts?
>
> . . . .
>
> THE WITNESS: It's amazing, Your Honor, what you can do with these computers. . . .
>
> If you ask me would I believe that you could do it, I would believe that. But it gets to the notion of—because of numerosity—of how thin you're willing to cut your margins on both the African-American and the Hispanic seats, cutting them down to a bare VAP majority in order to accomplish that.
>
> JUDGE HATCHETT: You've answered my question.

Tr. IV-194-195. In trying to create a plan with four Hispanic supermajority VAP districts and three African-American majority VAP districts, the NAACP was confronted with Gutherie's "numerosity" concern and his concern over how much of a margin is necessary to insure that minorities have opportunities to elect candidates of choice.

Counsel for the NAACP, Charles Burr, informed the court that "it is technically feasible to draw a four and three, but we were completely unable to get the percentages of the districts up to a level that I believe the parties will find acceptable." Tr. IV-217. Thus, the NAACP concluded that in order to create four Hispanic supermajority VAP districts and three African-American majority VAP districts, the number of minorities found in each district can be no more than our bare VAP majority guidelines. Additionally, the NAACP realized that these districts would contain an insufficient level or margin to ensure that minorities would have the opportunity to elect candidates of their choice.

After realizing that the NAACP had also established a Section 2 violation with respect to African-Americans, in that a third African-American VAP majority district could be created, plaintiff Reaves argued to the court that Plan 180 is in fact a "four-three plan." To establish that Plan 180 does in fact create three African-American VAP majority districts in addition to its four Hispanic VAP supermajority districts, plaintiff Reaves compared his African-American districts to those found in the NAACP's plan. Plaintiff Reaves contends that the NAACP's District 37, which is comprised of Broward and Dade Counties, is comparable to Plan 180's District 32 which also covers Broward and Dade County. Additionally, Reaves points out that the NAACP's District 39 which is wholly within Dade County, is comparable to Plan 180's District 36 which is also wholly within Dade County. Finally, Reaves argues that District 35 in the NAACP plan, a Broward/Palm Beach Senate seat, is comparable to Plan 180's District 28 which goes through Broward and St. Lucie County. Thus, plaintiff Reaves asserts that

Plan 180 creates, in essence, three African-American VAP majority districts without diluting the Hispanic vote.

Contrary to the assertions of plaintiff Reaves, we find that Plan 180 does not create three African-American majority VAP districts, and in fact, dilutes the African-American vote. Plan 180's third "African-American seat," District 28, does not contain an African-American majority VAP. African-Americans in District 28 of Plan 180 only constitutes 47.1 percent of the VAP. Gutherie describes this less than majority seat as follows:

> What is sometimes referred to as an access or influence seat begins in the Pompano Beach area north of Ft. Lauderdale, proceeds up to West Palm Beach and then across the Everglades into—the Everglades agricultural area—into Ft. Myers and northward through St. Lucie County, Ft. Pierce into Vero Beach and Indian River County.

Tr. IV-153-54. Gutherie also points out that the configurgation of District 28 is the result of Plan 180's inclusion of African-Americans in Ft. Lauderdale and the adjoining communities into District 32, the Plan's second African-American majority district which is comprised of portions of Dade and Broward Counties. Tr. IV-157. Specifically, Gutherie notes that:

> Because this large concentration population in downtown Ft. Lauderdale is not available for a further access seat or majority society north of Dade County, what Plan 180 has to do in order to accomplish that end is string a district as we discussed earlier, District 28, going from Pompano Beach north to Vero Beach and Indian River County, and west of Ft. Myers on the Gulf Coast.

Tr. IV-157-58. Thus, based on the record as a whole we find that Plan 180 does not create three African-American VAP majority districts.

Not only does Plan 180 fail to create a thrid African-American majority VAP district, Plan 180 is retrogressive to African-Americans in Dade County and the surrounding areas. With respect to the two African-American majority VAP districts and Plan 180, Dr. Weber testified that after analyzing the turnout for those particular districts, that it was his opinion that

> based upon analysis of turnout, the same kind of analysis I did for the Hispanic districts, that those districts are designed—and I'm sorry to use these words, and they may be offensive to some people in the courtroom, but they are designed to waste African-American votes. . . . They are packed, and there are more African-Americans than are necessary to provide a realistic opportunity for African-Americans to elect candidates of choice.

Tr. VI-135. Additionally, with respect to District 28, Dr. Weber testified that his turnout test for that district indicated that it would "fail miserably in terms of [its] ability to put African-Americans in control on the general election day." Tr. VI-136. Thus, Dr. Weber concluded that Plan 180's packing of African-Americans into Districts 32 and 36 in order to facilitate the creation of four Hispanic supermajority VAP districts, had a "decimating effect" on the possibility of creating an additional African-American majority seat in South Florida. Tr. VI-136. Based on the record, we find that plan 180 creates only two African-American majority VAP districts and its third African-American access district has tested to be ineffective. Thus, Plan 180 is in essence a four/two plan which continues to dilute the African-American vote.

After considering all of the evidence, this court came to the conclusion that the remedy for the Hispanics' Section 2 claim in South Florida and the remedy for the African-Americans' Section 2 claim in South Florida were mutually exclusive. Tr. VIII-53. The state of Florida, faced with the competing interests of Hispanics and Afri-

can-Americans in Dade County, sought to strike the fairest balance in its Senate reapportionment plan with respect to all the Dade County ethnic communities. The Supreme Court has held that:

> Reapportionment is primarily a matter for legislative consideration and determination . . . state legislatures have 'primary jurisdiction' over legislative reapportionment. . . . A federal district court, in the context of legislative reapportionment, should follow the policies and preferences of the state, as expressed in statutory and constitutional provisions, or in the reapportionment plans proposed by the state legislative, whenever adherence to state policy does not detract from the requirements of the federal Constitution.

Upham v. Seamon, 456 U.S. 37, 41, (1982) (quoting *White v. Weiser*, 412 U.S. 783, 795 (1973)). Because state legislatures have primary jurisdiction over legislative reapportionment, we must examine the state of Florida's policy choices and preferences as we determine the proper remedy for balancing the competing minority interests in South Florida. Realizing that the creation of a fourth Hispanic VAP supermajority district would adversely affect African-Americans in South Florida and that the creation of a third VAP majority district would adversely affect Hispanics in Dade County, the Florida Senate plan reaches a compromise in that it creates three supermajority Hispanic VAP districts and two majority African-American districts with a strong African-American influence district in the Dade County area.

The influence district in the Florida plan, as Gutherie describes,

> commences in the Liberty City/Overtown area, proceeds south through the Black Grove, Black Coral Gables, and south in Dade County through Leisure City, Richmond Heights, down and through Homestead and finally ending in Florida City. That district also includes Monroe County. The overall African-American VAP of that district is 35.5 percent. The district includes, by the way, most of current House District 118. House District 118 is a district which has 26 percent African-American VAP, 30 percent Hispanic VAP.
>
> In 1990, Tom Easterly, a white incumbent, left a seat in order to run for the Florida Senate. There was a primary, a democratic primary, which was contested by two African-Americans. Those were the only two people on the ballot. And the winner of that primary, Daryl Jones, won the general election by a margin of 65 percent over the Republican opponent.

Tr. IV-155. This influence district, District 40, in the Florida Senate reapportionment plan, creates in essence a district in which African-Americans can elect a candidate of their choice because of strong minority coalitions between the African-Americans and the Mexican-Americans, as well as white cross-over votes. Representative Willie Logan, Chairman of the Florida Caucus of Black State Legislators, testified that:

> The Joint Resolution as adopted by the Supreme Court better represents the black community not only in Dade County, but in south Florida. And the reasons for that are very simple: first of all, the seat that's in south Dade, which is only a thirty-some-odd-percent voting age population seat, also includes non-Cuban Republican Hispanics, that which are the Mexican community, which have proven over a period of time that they support not only Democratic candidates, but they are willing to support black candidates. And that was an example in the Daryl Jones House seat that also was testified at the south Dade hearing by the American-Mexican community, that they prefer to be in the district that would be

represented by a black versus being a district that would was being Republican.

Tr. III-147. Additionally, Representative Logan testified that the Florida Senate reapportionment plan comported closely with the desires of African-Americans with respect to having an African-American district based in the Ft. Lauderdale area of Broward County, and two African-American districts based in Dade County. Tr. III-156. Thus, this court finds that the Florida Senate Reapportionment Plan's Dade County African-American influence district performs as a third African-American district without adversely affecting Hispanics in the Dade County area. The court in *DeBaca*, noted in discussing balancing the interest between two minority groups that

> Federal courts have recognized that these political questions do exist and that the best means to resolve them is in the process of give-and-take between citizens and their elected officials. Political questions necessarily require that policy choices be made before they can be resolved. This is not a task federal courts are equipped to handle. They have recognized their shortcomings in this area, and will, whenever possible, defer to legislative policy choices, even if the choice is perceived to be unwise or is simply not the optimum choice.

DeBaca, 1992 WL 114049 at *2 (citing Strange, *Application of Voting Rights Act to Communities Containing Two or More Minority Groups—When is the Whole Greater than the Sum of the Parts?*, 20 Tex. Tech. L.Rev. 95, 124-125 (1989)). We find that between all the plans presented to the court, the Florida Senate Reapportionment plan is the fairest to all the ethnic communities in Dade County and the surrounding areas, and is the proper remedy in this case. Consequently, this court gives deference to the state policy as expressed in the Florida plan as validated by the Florida Supreme Court and imposes that plan as the remedy in this case. *See Upham v. Seamon*, 456 U.S. 37 (1982).

B. The House

Florida's House plan creates thirteen minority-majority districts of which nine have Hispanic VAP supermajority districts and four have African-American VAP majority districts. Eight of the nine Hispanic districts are contained in Dade County and the ninth Hispanic district is in Collier County. The four districts containing an African-American majority VAP are contained in Dade County. In the nine Hispanic supermajority VAP districts, Hispanics constitute the following percentages of the VAP: (1) District 102—65.68 percent; (2) District 107—63.85 percent; (3) District 110 is 83.64 percent; (4) District 111 76.56 percent; (5) District 112—68.67 percent; (6) District 113—75.70 percent; (7) District 114—78.38 percent; (8) District 115—65.28 percent; and (9) District 117—69.18 percent. African-Americans constitute the following percentages of the VAP in the four African-American districts: (1) District 103—55.73 percent; (2) District 104—50.96 percent; (3) District 108—57.24 percent; and (4) District 109—55.21 percent. Florida's House reapportionment plan creates twenty Dade County districts of which seventeen are wholly within Dade County and two share populations with other counties. District 102 joins population in Dade County with Collier County, and District 120 joins population in southern Dade County with Monroe County.

The De Grandy/Reaves/Humphrey plaintiffs and the DOJ take exception to Florida's House reapportionment plan as it pertains to Dade County because Florida's House plan fragments the Hispanic population concentrations such that Hispanics constitute a majority in only nine House districts. The plaintiffs contend that if the Dade County area of the State is divided into equally populated House districts which respect communities of interests and follow other nondiscriminatory plan-drawing criteria, Hispanics would constitute a supermajority of the VAP in two additional House districts.

For reasons already discussed in connection with the Senate, we hold that VAP is the relevant number for creating minority-majority House districts and that a supermajority of the VAP is necessary to create districts in which Hispanics can elect candidates of their choice. *See supra* section III, A. Additionally, we note that a supermajority VAP of 60 percent is an appropriate guideline for determining if two additional Hispanic districts can be created in the Dade County area. *See supra* Section III, A. In this case, the DOJ and the De Grandy/Reaves/Humphrey plaintiffs have established that eleven geographically compact districts can be drawn in which Hispanics in Dade County would have the potential to elect candidates of their choice.

The De Grandy/Reaves/Humphrey plaintiffs submitted the De Grandy plan which creates eleven Hispanic supermajority VAP districts. Hispanics constitute the following percentages of the VAP in the De Grandy plan's eleven Hispanic districts: (1) District 105—71 percent; (2) District 108—78.2 percent; (3) District 109—64.6 percent; (4) District 110—66.2 percent; (5) District 111—65.8 percent; (6) District 112—64.5 percent; (7) District 113—66.6 percent; (8) District 114—65.8 percent; (9) District 115—68.2 percent; (10) District 116—65.8; and (11) District 117 65.6 percent. This plan remedies the dilution of the Hispanic vote and does not adversely affect African-Americans because it creates four African-American districts. In the four African-American districts, African-Americans constitute the following percentages of the VAP: (1) District 102—57.6 percent; (2) District 103—57.8 percent; (3) District 106—57.7 percent and (4) District 107—57.3 percent.

Pursuant to *Upham v. Seamon* and *White v. Weiser*, this court sought to limit its intrusion upon state policy to what was necessary to correct the Section 2 violation. Accordingly, we allowed the State of Florida to present another House plan which remedied the dilution of the Hispanic vote and preserved its policy choices. The Florida House defendants initially presented a remedy containing only ten Hispanic districts which this court rejected as not fully remedying the dilution of the Hispanic vote. After warning the court to be very careful and deliberate in considering any changes to the Florida House plan, the Florida House defendants presented another remedial plan. Tr. VIII-126.

The Florida House defendants' second remedial plan contained eleven Hispanic supermajority VAP districts and four African-American VAP districts. In the House defendants' second remedial plan, the changes were confined to Dade County. Tr. VIII-126. The eleven Hispanic districts in the Florida House defendants' second remedial plan contain the following Hispanic VAP percentages: (1) District 102—65.78 percent; (2) District 106—61.34 percent; (3) District 107—61.05 percent; (4) District 110—77.66 percent; (5) District 111—77.39 percent; (6) District 112—62.77 percent; (7) District 113—62.22 percent; (8) District 114—65.23 percent; (9) District 115—65.29 percent; (10) District 116—65.60; and (11) District 117 at 63.81 percent. With respect to African-Americans, the second remedial plan created four African-American districts containing the following African-American VAP percentages: (1) District 103—61.51 percent; (2) District 104—55.10 percent; (3) District 108—55.25 percent; and (4) District 109—64.60 percent.

Because the Florida House defendants arbitrarily confined its changes to Dade County, the House defendants' second remedial plan does not create eleven effective House districts which give Hispanics the potential to elect the candidates of their choice. The second remedial House plan creates two House districts in the Miami Beach area which as we noted earlier has high concentrations of recent arrivals and non-citizens. Tr. VIII-129-130. Additionally, these two districts, District 106 and District 107, have Hispanic VAP of 61 percent. Tr. VIII-130. We

noted in our discussion of Florida's Senate plan that areas with high concentrations of recent Hispanic arrivals must have a VAP significantly higher than our 60 percent guideline level. *See supra* Section III, A. Because these two 61 percent districts are located in areas with high concentrations of recent Hispanic arrivals, we find that these districts do not give Hispanics a reasonable opportunity to elect candidates of their choice. Hence, we reject the Florida House defendants' second remedial plan because it fails to remedy the dilution of the Hispanic vote in South Florida.

The De Grandy/Reaves/Humphrey plaintiffs presented the modified De Grandy plan which sought to respect the policy choices of the state of Florida by merging the De Grandy remedy for South Florida into the existing Florida plan. The eleven Hispanic South Florida districts in the modified De Grandy plan contain the following Hispanic VAP percentages: (1) District 105—71.62 percent; (2) District 108—81.89 percent; (3) District 109—63.74 percent; (4) District 110—62.50 percent; (5) District 111—66.19 percent; (6) District 112—65.10 percent; (7) District 113—66.06 percent; (8) District 114—66.39 percent; (9) District 115—68.52 percent; (10) District 116—65.83 percent; and (11) District 117—66.24 percent. With respect to African-Americans in South Florida, the modified De Grandy plan creates four African-American districts containing the following African-American VAP percentages: (1) District 102—55.12 percent; (2) District 103—59.54 percent; (3) District 106—57.93 percent; and (4) District 107—56.46 percent. The modified De Grandy plan also creates a strong African-American access district in South Florida with an African-American VAP of 40.34 percent.

The modified De Grandy plan of course contained minor adjustments to district lines outside of Dade County in order to comply with the rule of "one person, one vote." Plaintiff De Grandy testified that:

> What we tried to do in the De Grandy Modified was to as much as possible enhance a little more the —a couple of the African-American seats while at the same time not impacting and trying to fit in the plan not impacting any other county than that which was impacted by Dade. That includes Dade; Monroe, which had a district in the Florida plan coming into Dade; Collier, which had a district in the Florida plan coming into Dade and Broward County.
>
> When you fit the plan, you have to not only fit the configuration, but also in terms of half the population of each district you have to deviate to comport with the plan you are fitting into. And while doing that, we also, when we were deviating that population tried to in effect, you know, boost our seats or minority seats more then they are in the De Grandy plan.
>
> So, basically, Your Honor, what we are really arguing is, Your Honors, please accept the De Grandy plan and accept it in the manner we have inserted it. That's what we are really arguing.

Tr. VIII-106-107. The plaintiffs are correct that in adopting a South Florida remedy adjustments must be made between what is in the Florida plan north of Dade and what the court adopts. The total enfranchisement of the minority populations in Dade County through creating a fair plan, causes a "ripple effect" into other counties leaving the problem of how to adjust the affected districts. The modified De Grandy plan minimized this "ripple effect" to eleven districts outside of Dade County. We find that the modified De Grandy plan best remedies the dilution of the Hispanic vote in South Florida while advancing the interests of African-Americans in South Florida. Accordingly, this court adopted the modified De Grandy plan as the court's plan and imposed that plan.

IV. CONCLUSION

This court issued orders following the completion of this case which carried out the conclusions expressed in this opinion. (Docs. 553 and 554). We held in our order imposing the 1992 Florida Senate Plan that the Florida Senate plan does not violate Section 2 of the Voting Rights Act of 1965, as amended. Doc. 553.) This language should be read as holding that the Florida Senate plan does not violate Section 2 such that a different remedy must be imposed. In other words, although the Florida Senate plan violates Section 2 of the voting rights act, it nevertheless is the best remedy to balance the competing minority interests in Dade County and the South Florida area. With respect to Florida's House of Representatives Districts we adopted the Modified De Grandy House of Representative Plan, Plan 268, as the court's plan and also impose that plan.

/s/ Joseph W. Hatchett
JOSEPH W. HATCHETT
United States Circuit Judge

/s/ William Stafford
WILLIAM STAFFORD
United States District Judge

/s/ Roger Vinson
ROGER VINSON
United States District Judge

Vinson, J., Concurring.

I join in the opinion, but set out separately my rationale for the result.

(1) Section 2 claims under the Voting Rights Act must meet the three-part test of *Thornburg v. Gingles*, 478 U.S. 30, 50-51, 106 S.Ct. 2752, 92 L.Ed.2d 25, 46-47 (1986): (a) a minority population that "is sufficiently large and geographically compact to constitute a majority" in a district; (b) a "politically cohesive" minority group; and (c) a white majority that "votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate."

(2) For Dade County, the second and third parts of the test are established by the overwhelming weight of the evidence in this case, subject to some variations among Hispanics from different counties of origin, and subject to the distinction that the Hispanic minorities are generally diametrically opposed to the voting preferences of the African-American minorities.

(3) Thus, the issue in both the challenge to the Florida Plan for the state Senate districts and for the state House districts in Dade County is a very narrow one: Have the plaintiffs established that the minority populations are sufficiently large and geographically compact to constitute a voting age majority in a district?

(4) Regarding the Senate challenge, the Hispanic plaintiffs established that they could have a fourth Hispanic-majority district that would be geographically compact, but only by either diluting the voting strength of African-American majority districts or by preserving such strength in districts that are not geographically compact. The African-American plaintiffs established that they could create a third African-American majority district only by using a district that was not geographically compact and which would also greatly dilute the

voting strength of Hispanics. Moreover, it is impossible to accommodate both four Hispanic and three African-American majority districts in any acceptable manner. Therefore, while the plaintiffs have established a Section 2 violation as to the four Hispanic districts, any remedy implementing the fourth district would violate Section 2 as to African-Americans. Thus, the existing Florida Plan for the Senate districts best accommodates the competing interests of both Hispanics and African-Americans.

(5) Regarding the House challenge, the plaintiffs have established in the De Grandy plan that eleven districts can be established in which Hispanics constitute over 64% of the voting age population and which are geographically compact. Further, these districts can be drawn without any dilution of African-American voting strength. Therefore, plaintiffs have established all requisites of their Section 2 claim as to the Dade County districts for the House of Representatives.

(5) (a) The defendants have attempted to show that it is the *citizen* Hispanic voting age population that is determinative. That Hispanic citizenship data is not available, however. Despite the lack of available data, the defendants presented estimates of Hispanic citizenship and attempted to apply them to the individual districts. Those estimates are unreliable. For example, William De Grove's analysis was based on a somewhat unorthodox regression analysis methodology that gave a range of non-citizenship rates of 9.5% for precincts with no Hispanics to 55% for precincts with 100% Hispanic voters. (Acknowledging, of course, that there is no such precinct.) He recognized that the error in that analysis was greatest at the extremes, i.e. at the 9.5% and 55% intercepts. Nevertheless, he used the 55% as the basis of all his citizenship calculations. Plainly, his estimated Hispanic citizenship ratios for the eleven districts must be viewed with low confidence and with a large range of error.

(5) (b) A better gauge of eligible voters within a district is the analysis of past election results. Those statistics established that Hispanics would be able to elect Hispanic candidates of choice in all eleven districts proposed by plaintiffs, and those statistics automatically account for voter citizenship, registration, and turn out. Thus, in the absence of any better data, the plaintiffs' evidence is sufficient. Further, Dr. Allan Lichtman's calculations for the plaintiffs, based in part on the defendants' citizenship data estimates, reflected an Hispanic voting age citizenship of 50% or more in all of the questioned eleven districts. This is a more relevant calculation, for the supermajority percentages are merely designed to account for, *inter alia*, citizenship.

(5) (c) Equally important, it is unrefuted that Hispanics have been able to elect the Hispanic candidate of choice in every district in which Hispanics constitute 59% or more of the voting age population (without regard to citizenship). It is not necessary to target anything greater than that. Nor is it necessary, although it may be desirable, to create a supermajority of 65% Hispanics (or 55% African Americans) to accomplish Section 2's purposes. Additionally, the growth trends in Dade County's Hispanic population indicate that the percentage of Hispanics will continue to increase, but the plaintiffs' Section 2 claims have been evaluated only on the basis of the 1990 census data. That data clearly establishes that the eleven districts meet the *Gingles* test.

(6) The remedial aspect of this court's adoption of the modified De Grandy plan presented a major challenge. In recognition of the respect due to the state's own policy and plan for redistricting, this court considered the defendants' two submitted plans, neither of which was even close to meeting Section 2's requirements and incorporating eleven Hispanic districts in Dade County in accordance with this court's findings on liability. At plaintiffs' suggestion, this court then requested that the de-

fendants draw a plan that incorporated the De Grandy plan for Dade County into the rest of the state. The defendants refused, however, and the court recessed to consider all of the alternatives available and make a decision. Because of the severe time constraints and the upcoming July 4th holiday weekend, it was critical that a plan be adopted without further delay. It was also apparent that the defendants were intent on delaying the adoption of any plan that implemented a true eleven-Hispanic districts House plan for Dade County. Accordingly, this court adopted the modified De Grandy plan. It does, of course, have a "ripple effect," but that effect is relatively minor and simply cannot be avoided. The defendants' belated change or position and announcement that they would attempt to draw a plan incorporating the eleven Hispanic districts from the De Grandy plan into the rest of the state came too late.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

TCA 92-40015-WS

MIGUEL DE GRANDY, MARIO DIAZ-BALART, ANDY IRELAND, CASIMER SMERICKI, VAN B. POOLE, TERRY KETCHEL, ROBERTO CASAS, RODOLFO GARCIA, JR., LUIS ROJAS, LINCOLN DIAZ-BALART, JAVIER SOUTO, JUSTO LUIS POSO, ALBERTO CARDENAS, REY VELAZQUEZ, LUIS MORSE, ALBERTO GUTMAN, KAREN E. BUTLER, SGT. AUGUSTA CARTER, JEAN VAN METER, ANNA M. PINELLAS, ROBERT WOODY, GINA HAHN, BILL PETERSEN, TERRY KESTER, MARGIE KINCAID, and BROOKS WHITE,

Plaintiffs,

v.

T.K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, LAWTON CHILES, in his official capacity as Governor of the State of Florida, JACK GORDON, in his official capacity as Chairman of the Senate Reapportionment Committee, PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida,

Defendants.

Civil Action No. 92-40131

FLORIDA STATE CONFERENCE OF NAACP BRANCHES, T. H. POOLE, SR., WHITFIELD JENKINS, LEON W. RUSSELL, WILLYE DENNIS, TURNER CLAYTON, RUFUS BROOKS, VICTOR HART, KERNA ILES, ROOSEVELT WALTERS, JOHNNIE MCMILLIAN, PHYLLIS BERRY, MARY A. PEARSON, MABLE BUTLER, IRIS WILSON, JEFF WHIGHAM, AL DAVIS, PEGGY DEMON, CARLTON MOORE, RICHARD POWELL, NEIL ADAMS, LESLIE MCDERMOTT, ROBERT SAUNDERS, SR., IRV MINNEY, ADA MOORE, ANITA DAVIS, and CALVIN BARNES,

Plaintiffs,

v.

LAWTON CHILES, in his official capacity as Governor of Florida, JIM SMITH, in his official capacity as Secretary of State of Florida, ROBERT BUTTERWORTH, in his official capacity as Attorney General of Florida, GWEN MARGOLIS, in her official capacity as President of the Florida Senate, T. K. WETHERELL, in his official capacity as Speaker of the Florida House of Representatives, JACK GORDON, in his official capacity as Chairperson of the House Reapportionment Committee, and PETER R. WALLACE, in his official capacity as Chairman of the House Reapportionment Committee,

Defendants.

OPINION

[Filed May 29, 1992]

Florida currently has nineteen members in its congressional delegation. According to the 1990 federal decennial census, increases in Florida's population entitle Florida to four additional members in the United States House of Representatives. Thus, the number in Florida's congressional delegation has increased to twenty-three.

According to the 1990 census data, the total population of the state of Florida is 12,937,926 persons. Between the census of 1980 and the census of 1990, Florida's population increased 3,213,602 persons. To achieve equality between Florida's twenty-three districts, each district would ideally contain 562,518.5 persons. Seven Florida counties have a population greater than the ideal population of 562,518.5 persons. Those counties are: Broward, Dade, Duval, Hillsborough, Orange, Palm Beach, and Pinellas.

A longstanding general history of official discrimination against minorities has influenced Florida's electoral process. In 1885, Article VI, Section 8 of the Florida Constitution imposed a poll tax which disenfranchised poor minority voters. Additionally, Article XII, Section 12 of the 1885 Florida Constitution segregated African-American and white school children. Article XXVI, Section 24 of that same Florida Constitution also outlawed the intermarriage of white with African-Americans. As recently as 1967, § 350.20, Fla. Stat. provided in part: "The Florida Public Service Commissioners may prescribe reasonable rules and regulations relating to the separation of white and colored passengers in passenger cars being operated in this state by any railroad company or other common carrier." Additionally, § 1.01(6), Fla. Stat. (1967) provided that "the words 'Negro,' 'colored,' 'colored persons,' 'mulatto,' or 'persons of color,' when applied to persons, include every person having one-eighth or more of African or Negro blood." Federal precedent has also addressed numerous recent discriminatory election practices in Florida, including at-large election schemes, white primaries, majority vote requirements, and candidate filing fees. Such official state discrimination has adversely affected the ability of minorities to participate in the political process.

The parties agree that racially polarized voting exists throughout Florida to varying degrees. The results of Florida's legislative elections over the past ten years es-

tablished the presence of racially polarized voting. *See In re Constitutionality of Senate Joint Resolution 2G Special Apportionment Session 1992*, No. 79-674, slip op. at 34-37 (Fla. May 13, 1992) (Chief Justice Shaw, dissenting). In areas such as education, employment and health care, Florida's minorities have borne the effects of discrimination. The 1990 census figures demonstrate that among persons sixteen years or older, African-Americans are more than twice as likely to be unemployed as whites. In Florida, the poverty rate for African-Americans is more than three times higher than the rate for whites. Additionally, we note that voting studies have consistently indicated the strong relationship between socio-economic status and political participation. Thus, the legal barriers and the economic barriers which the legacy of racism has created in the state of Florida, have prevented African-Americans from fully participating in the political process.

In the state of Florida, minorities have had very little success in being elected to either the United States Congress or the Florida Legislature. An African-American has not represented Florida in the United States in over a century. In addition, only one Hispanic congressperson serves from Florida. From 1889 until 1968, African-Americans were unable to elect a single representative to the state house. Additionally, African-Americans were unable to elect a representative to the state senate until ten years ago. Until four years ago, no Hispanic state senator had ever been elected in Florida. *See In re Constitutionality of Senate Joint Resolution 2G*, No. 79-674 at 34-37 (Chief Justice Shaw, dissenting).

As a result of Florida's past discrimination practices, the United States Justice Department must preclear five Florida counties pursuant to Section 5 of the Voting Rights Act, as amended. *See* 42 U.S.C. § 1973 *et seq.* Those counties are: Collier, Hardee, Hendry, Hillsborough, and Monroe. The Florida Constitution does not

provide a method for congressional redistricting if the the state legislature fails to pass a redistricting plan, or the United States Justice Department fails to preclear a plan the state legislature adopted.

Pursuant to the Florida Statutes, candidates seeking federal office in Florida must qualify between July 6 and July 10, 1992. The first primary election is scheduled to occur on September 1, 1992. The general election is scheduled to occur on November 3, 1992. Given this set of circumstances, the plaintiffs filed the following action.

PROCEDURAL BACKGROUND

On the opening day of the 1992 Florida legislative session, Miguel DeGrandy, a member of the Florida House of Representatives, and other registered voters ("DeGrandy plaintiffs") filed a complaint against the Speaker of the Florida House of Representatives, the President of the Florida Senate, the Governor of Florida, and other state officials. The DeGrandy plaintiffs filed the complaint in the District Court for the Northern District of Florida challenging the constitutionality of Florida's current congressional and state legislative districts. The DeGrandy plaintiffs alleged that the current districts violate both the Equal Protection Clause of the United States Constitution and the Voting Rights Act of 1965, as amended, and urged this court to assert jurisdiction in order to redistrict and reapportion the state.[1] *See* 42 U.S.C. § 1973 *et seq.*

The DeGrandy plaintiffs filed a first amended complaint on January 23, 1992. The defendants moved to dismiss the complaint. After hearing arguments on the

[1] In this order, the term "redistricting" refers to the process of drawing new congressional districts, while the term "reapportionment" describes the process of redistricting state house and senate seats. *See* Bryant, Giddings & Kaplan, *Partisan Gerrymandering A New Concern for Florida's 1992 Reapportionment*, 19 Fla. St. U.L. Rev. 265, 265 n.3 (1991).

motion, the court dismissed the action due to lack of subject matter jurisdiction. On March 9, 1992, the DeGrandy plaintiffs filed a second amended complaint. On March 13, 1992, the Florida Legislature ended its regular session without adopting either a congressional redistricting or a state reapportionment plan.

Subsequently, on March 27, 1992, this three-judge court convened and denied all motions to dismiss and established an expedited scheduling order to adopt congressional and state legislative plans by May 29, 1992. This scheduling order in no way enjoined or prevented state redistricting and reapportionment agencies from attempting to enact their own plans. When this court issued the expedited scheduling order, however, we were concerned that the state legislature would be unable to pass a congressional redistricting plan and have the Justice Department preclear that plan in time for the scheduled candidate qualification date of July 6, 1992. This court was particularly concerned that minority voters would not be able to participate meaningfully in the political process and adequately decide on a candidate of their choice given the time constraints of the redistricting process. The absence of a meaningful opportunity for minorities to participate in the political process and elect a candidate of their choice constitutes a violation of section 2 of the Voting Rights Act. Further, none of the parties presented evidence or testimony to this court indicating that the Florida legislature would convene and adopt a congressional redistricting plan in time for the July 6 qualifying date.

In fact, on April 2, 1992, the Governor of Florida, Lawton Chiles, called a special redistricting and reapportionment session of the Florida Legislature pursuant to Article III, Section 16, of the Florida Constitution. While the legislature could not agree on a congressional redistricting plan, it did adopt Senate Joint Resolution 2-G reapportioning state House and Senate districts.

Meanwhile, this case progressed and the court consolidated with it a similar lawsuit that the Florida State Conference of the NAACP Branches and many individual African-American voters filed on April 7, 1992. The court also granted many persons and organizations leave to intervene or act as amicus curiae. Those acting as amici are: Simon Ferro, State Chairman of the Florida Democratic Party; Common Cause; Florida AFL-CIO; United States Representative Craig James; The Cuban American Bar Association; The Coalition of Hispanic Women; and State Representative Daniel Webster. Plaintiff-intervenors include: Gwen Humphrey; State Representative Darryl Reaves; United States Representative Jim Bacchus; and United States Representative Andy Ireland. State Representative Alzo Reddick is a defendant-intervenor.

In order to facilitate taking evidence concerning the many proposed congressional plans, the court appointed The Honorable C. Clyde Atkins, Senior United States District Judge, Southern District of Florida on April 6, 1992, to serve as Special Master. The court charged the Special Master with the task of considering and evaluating congressional redistricting and legislative reapportionment plans for Florida in a short period of time.

Subsequently, on April 17, 1992, Robert Butterworth, the Attorney General of the State of Florida, submitted Senate Joint Resolution 2-G concerning state legislative reapportionment to the United States Justice Department for preclearance pursuant to Section 5 of the Voting Rights Act. That same day, this court issued an order bifurcating the congressional redistricting and state reapportionment hearings and setting an amended schedule. The parties stipulated that Florida's current congressional district lines are malapportioned. We held on April 30, 1992, that Florida's existing congressional plan is unconstitutional. On May 13, 1992, the Florida Supreme Court validated Senate Joint Resolution 2-G. As a result of the validation, this court stayed proceedings related to state reapportionment.

Meanwhile, on April 24, 1992, the Special Master appointed Professor M. David Gelfand as an Independent Expert and instructed him to consider and evaluate the redistricting plans proposed. Additionally, the Special Master charged the Independent Expert with either recommending one of the parties' plans, or formulating one himself. The Special Master conducted a full week of hearings in which he accepted plans into evidence and heard expert testimony concerning the proposed redistricting plans. Ultimately, on May 14, 1992, Professor Gelfand submitted his report to the Special Master in which he recommended for adoption Independent Expert Plan 308, a combination of several plans the parties submitted.

On May 15, 1992, the parties cross-examined Professor Gelfand concerning his proposed redistricting plan. The Special Master then conducted an evaluation of the plans and submitted his report to this court on May 18, 1992. The Special Master recommended Independent Expert Plan 308.

This court held a hearing on May 27, 1992, to hear the parties' objections to the Special Master's report. Having considered all the evidence submitted concerning Florida's congressional redistricting, the court adopts the Special Master's findings of fact and conclusions of law. The court notes that the Special Master did an outstanding job of analyzing the evidence and testimony, recommending a plan that will enable minorities to participate in Florida's electoral politics and to elect candidates of their choice. For his effort, this court is grateful. We emphasize, however, that the Special Master did not have final approval of the redistricting of Florida. After many hours of study, this court independently determined that the Special Master's recommended plan should be adopted, which we now call the 1992 Florida Redistricting Plan.[2]

[2] See Appendix A (map of the adopted plan); Appendix B (accompanying curative rules regarding contiguity); Appendix C (Special Master's Report and accompanying attachments, including the Independent Expert's Report. Note, however, that Independent Expert's Exhibits 2A, 2B, and 3 are not attached to this Order. Independent Expert's Exhibits 2A and 2B, the Technical Plan Descriptions, are attached to the Judgment).

The remainder of this order is divided into seven parts. Part I summarizes the law the court applies in this case. Part II evaluates the plans the parties submitted. Part III contains a discussion of the expert witnesses' proposed plan. Part IV summarizes objections made to the Special Master's Report. Part V expressly incorporates the Special Master's and Independent Expert's Reports. Part VI contains this court's conclusions regarding the congressional redistricting plans. Lastly, Part VII certifies that the 1992 Florida Redistricting Plan is a final judgment pursuant to rule 54(b).

PART I—LEGAL PRINCIPLES

The Voting Rights Act

The Voting Rights Act arose as a remedy to racially discriminatory election practices, particularly in the South. Enactment of the Fifteenth Amendment after the Civil War eliminated many statutory obstacles to African-American voting. Nonetheless, state and local officials soon utilized impediments to voter registration as a means of denying African-Americans the right to vote. In the early 1960's, the United States Justice Department challenged the use of literacy tests in voter registration on a case-by-case basis. Because this approach proved ineffective, Congress passed the Voting Rights Act in 1965. *See* S. Rep. No. 417, 97th Cong., 2d Sess. 27 (1982) (Senate Report on 1982 amendments to the Voting Rights Act), *reprinted in* 1982 U.S.C.C.A.N. 177 [hereinafter "Senate Report"]. As Senator Jacob Javits stated, the purpose of the Voting Rights Act was "not only to correct an active history of discrimination, the denying to [African-Americans] of the right to register and vote, but also to

deal with the accumulation of discrimination . . . . The bill would attempt to do something about accumulated wrongs and a continuance of the wrongs." Senate Report at 182.

The two central provisions of the Voting Rights Act are section 2 and section 5. Section 2 forbids any "state or political subdivision" from imposing or applying any "voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color," or membership in a language minority. 42 U.S.C. § 1973(a). Section 5 contains the requirement that any change in voting qualifications, prerequisites, standards, practices, or procedures of certain covered states or political subdivisions must be "precleared" by the United States Justice Department. The Justice Department will only preclear plans that are not discriminatory in purpose and effect. *See* 42 U.S.C. 1973 (c).

1982 Amendments

Pre-1980, the Supreme Court held that plaintiffs could prevail in Voting Rights Act suits by establishing that a challenged law or procedure resulted in denying a racial or language minority equal participation in the electoral process. Under this result-oriented test, the court looked at the totality of the circumstances surrounding the local electoral process to determine whether a Voting Rights Act violation occurred. It was unnecessary, however, for a plaintiff to show that the challenged law or procedure was either designed or maintained to effectuate a discriminatory purpose.

In *City of Mobile v. Bolden*, 446 U.S. 55 (1980), a plurality of the Supreme Court increased the plaintiff's burden of proof in Voting Rights Act cases by requiring plaintiffs to prove a discriminatory intent on the part of

the legislators who enacted the challenged laws or procedures. Congress found this new burden of proof unacceptably difficult for Voting Rights Act plaintiffs and amended section 2 in 1982. *See* Pub. L. No. 97-205, 96 Stat. 131, 134 (1982). The amendment allowed plaintiffs to prove section 2 violations by demonstrating that minorities were denied an equal chance to participate in the electoral process based on the totality of the circumstances. Thus, Congress essentially codified the result-oriented test used in pre-*Bolden* cases. The amendment specifically provided, however, that it was not to be read to require proportionate representation. Plaintiffs demonstrate a violation of the Act only when equal access to the political process has been denied.

To determine whether minorities have an equal opportunity to participate in the political process and to select candidates of their choice, the Senate Report accompanying the amended section 2 delineated several objective factors that should be considered. These objective factors include:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

2. the extent to which voting in the election of the state or political subdivision is racially polarized;

3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group. And whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

See Senate Report at 206-07 (citing *White v. Regester*, 412 U.S. 755 (1973); *Zimmer v. McKeithen*, 485 F.2d 1297 (5th Cir. 1973)). Under the 1982 amendment to section 2, a plaintiff may prove a violation of the Act if a proposed redistricting plan dilutes minority voting strength. *See Jeffers v. Clinton*, 730 F. Supp. 196, 204 (E.D. Ark. 1989), *aff'd* 111 S. Ct. 662 (1991); *Jordan v. Winter*, 604 F. Supp. 807, 811-12 (N.D. Miss. 1984).

The Supreme Court first applied the 1982 amendment in *Thornburg v. Gingles*, 478 U.S. 30 (1986). In *Gingles*, plaintiffs challenged existing multi-member state legislative districts. The Court held that plaintiffs must prove three threshold criteria when challenging an at-large system: (1) the minority group is sufficiently large and

geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) the minority's preferred candidate is usually defeated by white bloc voting. *Gingles*, 478 U.S. at 50-51.

Gingles, while helpful, is not dispositive of this case because this case does not involve a traditional section 2 challenge to an existing plan. *See In re Constitutionality of Senate Joint Resolution 2G, Special Apportionment Session 1992*, No. 79-674, slip op. 3, 29 (Fla. May 13, 1992) (Shaw, C.J. dissenting). Although the absence of an existing plan prevents the court from engaging in the factually intensive analysis of a traditional section 2 challenge, this court must consider in crafting the redistricting plan the section 2 requirement of ensuring that the plan does not dilute the votes of racial or language minorities. The Supreme Court has held that "it is imperative for the district court, in drawing up a new plan, to make every effort not only to comply with the established constitutional standards, but also to allay suspicion and avoid the creation of concerns that might lead to new constitutional challenges." *Connor v. Finch*, 431 U.S. 407, 425 (1977).

Court-ordered Plans

While it is the duty of the legislature to redistrict the state, when the legislature is unable to adopt a redistricting plan, the obligation of devising a redistricting scheme falls upon the courts. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). Two primary factors guide this court in evaluating proposed redistricting plans: (1) population equality (one person-one vote); and (2) the racial fairness of the plan. *See Hastert v. State Bd. of Elections*, 777 F. Supp. 634 (N.D. Ill. 1991); *Major v. Treen*, 574 F. Supp. 325, 342 n.22 (E.D. La. 1983).

To satisfy the one person-one vote requirement, this court must draw the state's congressional districts so

that their populations are equal. *See Wesberry v. Sanders*, 376 U.S. 1 (1964) (interpreting U.S. Constitution, art. I, sec. 2). In drawing Florida's congressional districts, this court must seek to avoid *de minimis* deviations from exact population equality unless the deviations are necessary to achieve some critical state objective. *See Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (rejecting deviation of less than .07 percent); *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969) (only those population variances "which are unavoidable despite a good faith effort to achieve absolute equality or for which justification is shown" will be accepted). Because several plans have been introduced in this case bearing a minimum deviation of one person or .000177 percent, this court must adopt a plan which meets this standard unless greater deviation is necessary to ensure racial fairness. *See Hastert*, 777 F. Supp. at 644.

In analyzing the racial fairness factor, the voting age population (VAP) is the relevant number to be used in determining whether minorities in a particular district will be able to elect a candidate of their choice. *See Solomon v. Liberty County*, 899 F.2d 1012, 1018 (11th Cir. 1990) (*en banc*), *cert. denied*, 111 S. Ct. 670 (1991). Further, because Hispanic communities are characterized by a large number of noncitizens and lower voter registration rates, a super majority of the VAP is necessary to create districts in which Hispanics can elect candidates of their choice. This court must ensure that a court-imposed plan does not dilute the votes of racial or language minorities. *See* Senate Report at 204.

This court should also consider issues of possible retrogression affecting the five Florida counties which come under the protection of section 5 of the Voting Rights Act. Although the Supreme Court has held in *McDaniel v. Sanchez*, 452 U.S. 130, 138 (1981), that court-ordered congressional redistricting plans need not be precleared,

the court should consider whether the changes proposed in a redistricting plan make members of racial or language minorities in the five protected counties worse off than they were before the change in terms of their ability to participate effectively in the electoral process. *See Beer v. United States*, 425 U.S. 130 (1976); *see also City of Lockhart v. United States*, 460 U.S. 125 (1983).

In addition to the constitutional requirement of one person-one vote and the statutory requirements of section 2 and section 5 of the Voting Rights Act, the court has considered the following permissive criteria in evaluating redistricting plans: contiguity, compactness, respect for traditional boundaries, maintaining communities of interest, and party competitiveness. Under Florida law, a "district lacks contiguity only when a part is isolated from the rest by the territory of another district." *In re Apportionment Law*, 414 So. 2d 1040, 1051 (Fla. 1982). Although no federal or state requirement that congressional districts be contiguous exists, contiguity is appropriate. *See Dunnell v. Austin*, 344 F. Supp. 210, 215 (E.D. Mich. 1972); *David v. Cahill*, 342 F. Supp. 463, 469 (D.N.J. 1972). With regard to compactness, the district court in *Dillard v. Baldwin County Bd. of Education*, 686 F. Supp. 1459, 1466 (M.D. Ala. 1988) correctly pointed out that

> the degree of geographical symmetry or attractiveness is therefore a desirable consideration for districting but only to the extent it aids or facilitates the political process, and only as one among many considerations a court should include, the principal one being section 2's vote dilution prohibition in determining whether there is sufficient compactness for a majority [minority] district.

Dillard, 686 F. Supp. at 1466. Thus, the proper focus of any geographic compactness analysis is upon the size and relative concentration of the minority population,

rather than upon the size or shape of the district. Additionally, although respecting traditional county boundaries is a desirable approach, this aesthetic requirement should not undercut the primary goal of creating minority districts. The consideration of communities of interest is also relevant to the determination of compactness. If a district is so spread out that no sense of community exists, then that district is not sufficiently compact. *See Dillard*, 686 F. Supp. at 1466. However, members of a minority group who live in separate enclaves may still be included in a single district where it can be shown that they constitute a single community having similar interests. *See Hastert*, 777 F. Supp. at 649. Finally, maintaining party competitivenss in Florida's congressional districts is an important goal because Florida has developed into a strong two-party state.

II. EVALUATING THE PLANS UNDER THE GUIDELINES

General Considerations

Like the Special Master, we conclude that "the law supports the drawing of a minority district where, in light of minority concentrations and community of interests, such a district can reasonably be drawn." Report of the Special Master at 14. All the proposed congressional redistricting plans contain at least one African-American VAP district and two Hispanic super majority VAP districts. Thus, the inquiry becomes whether a second African-American VAP district is necessary, and whether African-American "influence" districts should also be included in the plan.

The parties and the *amici curiae* take two different approaches to the creation of African-American districts. On the one hand, four of the proposed plans create two African-American districts with a VAP majority. On the other hand, several of the plans create only one African-American district with a VAP majority, but

also create two or three other districts with respectable African-American voting age populations. These districts, with substantial minority concentrations comprising less than fifty percent of the VAP are commonly referred to as influence districts. Proponents of the plans which include influence districts argue that it is more desirable for African-Americans to have influence in several districts rather than constituting a majority in only two districts.

We believe the second approach, which fractures the African-American community into influence districts, would merely continue the past dilution of minority voting strength. Where, in a statewide redistricting case such as the present one, this court can reasonably draw a majority-minority district, we cannot choose to create an influence district or districts. *Compare Brooks v. Winter*, 461 U.S. 921 (1983) (vacating three-judge court's influence district remedy and remanding for reconsideration in light of amendments to section 2) *with Mississippi Republican Executive Comm'n v. Brooks*, 469 U.S. 1002 (1984) (affirming use of majority African-American district as remedy); *see also United States v. Dallas County Comm'n*, 850 F.2d 1433, 1439-42 (11th Cir. 1988) (vacating district court's remedy, which included one at-large influence district, and adopting instead a plan which included five single-member districts, including two African-American districts, two white districts, and one African-American "swing" district), *cert. denied*, 490 U.S. 1030 (1989). The approach of fracturing the African-American community in order to create influence districts does not further Congress's intent of completely remedying the prior dilution of minority voting strength and providing a meaningful opportunity to participate in the political process. *See* Senate Report *supra* at 31. It is not enough for minority groups to be able to influence elections because, under the Voting Rights Act, they must be able to determine the outcome of elections and elect representatives of their choice. *See* 42 U.S.C. § 1973(b) (1982). As the Seventh Circuit noted, "[t]here is simply

no point in providing minorities with a 'remedy' for the illegal deprivation of their representational rights in a form which will not in fact provide them with a realistic opportunity to elect a representative of their choice." *Ketchum v. Byrne*, 740 F.2d 1398, 1413 (7th Cir. 1984).

Specific Plans

The Florida State Conference of NAACP Branches submitted a plan which contains two African-American voter age population majority districts. The NAACP plan also contains an African-American influence district and two Hispanic super majority districts. Although this approach is sound, the plan's deviation of 0.02 from absolute population equality makes it unacceptable as a court-ordered plan.

Gwen Margolis, President of the Florida Senate, submitted a plan which proposed two African-American majority districts and two super majority Hispanic districts. The weakness of the Margolis plan lies in its method of forming the two south Florida Hispanic districts. The plan creates the districts by combining Dade County Hispanic neighborhoods with areas in predominantly non-Hispanic adjacent counties. The division of Dade's Hispanic neighborhoods among five congressional districts seriously damages the community of interest of these neighborhoods. Additionally, the plan includes areas of high white growth in the Hispanic districts, reducing the likelihood that Hispanics will be able to elect candidates of their choice.

Congressman Andy Ireland submitted a plan which creates two African-American majority districts, one African-American influence district, and two super majority Hispanic districts. The Ireland plan's African-American majority district in central Florida is extremely long, irregularly shaped, and extends from Palm Beach County in south Florida to Volusia County in central Florida, and from St. Lucie County on the Atlantic Coast to Pinellas County on the Gulf Coast. This

long, irregularly shaped district traverses parts of seventeen counties and involves three major media markets. The communities linked in this sprawling district are likely to have competing interests and do not constitute communities of interest. Additionally, the district contains several areas in which the rate of growth in the white community is expected to be large. Thus, it is doubtful that the African-American community will be able to maintain the 50.1 percent voter age population majority.

Congressman Craig T. James submitted a plan which provides for two African-American majority districts and no influence districts. The James plan creates two Hispanic super majority districts in Dade County. The basic thrust of the James plan was to maintain the present district structure where possible and to leave incumbent districts in tact. The plan's major deficiency is that it packs African-Americans into two strong majority districts but creates no influence districts.

Miguel DeGrandy, an Hispanic member of the Florida House of Representatives, sponsored a plan which establishes a single African-American majority VAP district, three African-American influence districts, and two Hispanic super majority VAP districts. The DeGrandy plan has several disadvantages. First, it provides for only one African-American majority VAP district. Second, the plan's sprawling influence district in central Florida links together populations in the Tampa and Orlando areas likely to have competing interests.

The Humphrey intervenors, a group of African-American citizens, sponsored a plan which is identical to the first plan sponsored by State Reps. Reeves, Brown, and Hargrett. Collectively, these plans are referred to as the Lawyer's Committee plans. The Lawyer's Committee plans form an African-American majority district in the south, with influence districts in the northern, central, and southern areas of the state. Additionally, the plans

form two Hispanic super majority districts in the southern portion of the state. The Lawyer's Committee plans contain the same disadvantages as the DeGrandy plan, in that they only provide for one African-American VAP majority district, while other plans have demonstrated that two or more are possible.

Common Cause, a national public advocacy group, sponsored a plan which contains one African-American super majority district, one African-American influence district, and two super majority Hispanic districts. Although the Common Cause plan achieves the minimum possible deviation from the requirement of one person-one vote, Common Cause's strict adherence to county boundaries prevented it from creating a second district with an African-American voter age population majority. This second African-American majority district, as other plans have demonstrated, can be created while still achieving the minimum deviation. Common Cause's demographer and expert admitted that the Common Cause plan was not the best plan and recognized that its principal shortcoming was its failure to create more minority districts.

T.K. Wetherell, Speaker of the Florida House of Representatives, submitted a plan which has one African-American VAP majority district, two African-American influence districts, and two Hispanic super majority districts. In drafting the Wetherell plan, members of the Florida House of Representatives placed policy considerations ahead of strictly legal ones. Thus, the plan elevates the secondary criteria of compactness, coherent communities of shared interest, and respect for traditional political boundaries over the primary principle of ensuring that minority voting strength is not diluted.

Jack Gordon, Chairman of the Florida Senate Committee on Reapportionment submitted a plan which creates one African-American and two Hispanic majority districts in south Florida. The Hispanic districts are nearly identical to the Hispanic districts in the Margolis plan. The

Gordon Plan, like the Margolis plan, decreases the access of Dade County Hispanics to the political process because it splits the Hispanic population among five congressional districts extending beyond Dade County. Additionally, the Gordon plan fails to draw a second African-American majority district.

State Rep. Alzo Reddick submitted a plan which creates one African-American majority district in south Florida, an African-American influence district in North Florida, and two Hispanic majority districts located primarily in Dade County. The Reddick plan minimizes the ability of minority groups, particularly African-Americans, to participate in the political process. Specifically, the Reddick plan creates only one African-American majority district and one African-American influence district with a small African-American voter age population of 36.3 percent.

Daniel Webster submitted a plan which creates only one African-American majority district and two Hispanic super majority districts. The Webster plan perpetuates the traditional dilution of African-American voting strength by keeping African-American voters submerged in heavily white districts.[3]

In light of the deficiencies of all the plans, the expert witness proposed his own plan for the Special Master's consideration and adoption.

III. EXPERT PLAN 308

The independent expert assembled his plan (Plan 308) from key portions of other plans, in particular the DeGrandy plan, the Common Cause plan, the Margolis plan, and the NAACP plan. The expert plan takes the NAACP and DeGrandy approach of creating two African-American majority districts, plus one influence African-Ameri-

[3] The AFL-CIO also submitted a plan, but withdrew the plan in light of its similarities to the Reddick and Gordon plans.

can district. Additionally, the expert's plan follows the DeGrandy approach with some modification in south Florida, keeping Cuban-American communities together and creating two Hispanic super majority districts, plus one African-American majority district, in Dade County. The expert pointed out that his plan follows the lead of the Margolis plan with respect to the African-American majority district in north Florida. However, the plan makes changes in that district based upon the NAACP plan. Additionally, the expert witness points out that the plan generally follows the Common Cause approach to central Florida.

Districts 18 and 21 are the two super majority Hispanic districts in the expert's plan. District 18 has a Hispanic VAP of 67.5 percent, and District 21 has a Hispanic VAP of 70.6 percent. These are reasonable numbers for an effective Hispanic district. Districts 3 and 17 are the two African-American majority VAP districts in the expert's plan. District 17, in Dade County has a total African-American population of 58.4 percent, VAP of 54 percent, and registration of 59.3 percent. District 3 has an African-American total population of 55 percent, VAP of 50.6 percent, and registration of 50.6 percent. In addition, the expert's plan creates an African-American influence district. District 23, which has a substantial African-American voter age population of 45.7 percent.

In considering retrogression under section 5, we note that the expert's plan is a state-wide congressional redistricting plan in which the districts must all have the same population. Thus, no single district can be examined or changed in isolation. The expert's plan increases both Hispanic and African-American political representation when the Florida congressional delegation is considered as a whole. The minority populations of districts have shifted, so that minority populations are now lower in some districts and higher in others. Nevertheless, the plan overall substantially increases the level of political

participation and electoral representation for the members of minority groups in Florida. Additionally, expert plan 308 is politically competitive.

PART IV—OBJECTIONS

The DeGrandy plaintiffs "generally accept" the Special Master's plan. They contend, however, that the creation of two African-American influence districts in northern and central Florida under their plan better serves the purposes of the Voting Rights Act. They argue that African-Americans living in the Tampa Bay area and between Jacksonville and Tallahassee achieve a level of influence under the DeGrandy plan lacking under the Special Master's plan.

Plaintiff intervenors Reeves, Brown, and Hargrett agree that the Special Master's plan meets the requirements of the Constitution and the Voting Rights Act. They argue, however, that their own plan (212) is superior. Without explanation, they disagree with the Special Master's treatment of central Florida. In north Florida, they support the creation of a majority-minority district which includes African-Americans from Jackson County to Duval County.

Plaintiff intervenor Rep. Andy Ireland recognizes that the Special Master's plan meets the requirements of the U.S. Constitution and the Voting Rights Act. He contends, however, that the plan fails to meet certain neutral redistricting criteria. *See generally Arizonans for Fair Representation v. Symington*, No. Civ. 92-256-PHX-SMM (D. Ariz. April 30, 1992). Ireland proposes three changes to correct these errors. First, he argues that the borders of Districts 9, 5, and 12 should be modified so that relatively developed western Pasco County moves into District 9, while rural parts of Pasco County move into District 5. These minor adjustments will preserve communities of interest, one of the three neutral criteria mentioned in *Arizonans*. *See also Carstens v. Lamm*, 543 F. Supp. 68, 88 (D. Colo. 1982). Second, Ireland proposes adjusting

the borders of Districts 16, 22, and 23 to avoid the unnecessary "out-districting" of incumbent Rep. Tom Lewis. *See Arizonans*, slip op. at 7; *South Carolina State Conference Branches of NAACP v. Riley*, 533 F. Supp. 1178, 1180-81 (D.S.C. 1982). Ireland's proposal would put Lewis's residence in District 16, the district most closely approximating his present district. Finally, Ireland proposes moving District 23 slightly to the west where it parallels District 22 in order to avoid splitting Boca Raton among three districts. Ireland contends that the court can make all three of these changes without compromising the constitutional and statutory integrity of the Special Master's plan.

Defendants Margolis and Gordon criticize the Special Master's plan for creating an African-American influence district in south Florida. They contend that the Voting Rights Act does not require influence districts, and several courts have specifically rejected them. *See, e.g., McNeil v. Springfield Park Dist.*, 851 F.2d 937 (7th Cir. 1988); *Turner v. Arkansas*, 784 F. Supp. 553 (E.D. Ark. 1991). Margolis and Gordon argue that the independent expert relied upon insufficient evidence in concluding that District 23 would be an effective minority influence district. They further argue that the expert failed to account sufficiently for demographic trends in District 17, the African-American majority district in south Florida. According to Margolis and Gordon, Hispanic immigration into District 17 will overwhelm the black majority VAP by the end of the decade. Accordingly, Margolis and Gordon support the creation of a majority-minority district in south Florida with a sixty-two percent African-American VAP, as compared to the Special Master's majority-minority district with a fifty-four percent African-American VAP.[4] They would achieve this higher

[4] Margolis argues that the Special Master's inclusion of black Hispanics in the African-American population figures for District 17 further overstates the African-American VAP for that district.

African-American VAP in the majority-minority district by eschewing a south Florida African-American influence district.

The Humphrey plaintiff intervenors contend that the Special Master's plan meets statutory and constitutional requirements. Much of their memorandum is devoted to defending the plan's treatment of south Florida against Margolis and Gordon's attack. The Humphrey intervenors argue that the Constitution and the Voting Rights Act require the creation of an African-American influence district in south Florida.[5] They further argue that any change in the Special Master's plan should be limited to increasing African-American representation in north and central Florida. They argue that their plan, creating two strong minority influence districts in those regions, is preferable to the Special Master's plan.[6]

The House defendants contend that the Special Master ignored the first requirement of the three-prong test in *Gingles*, 478 U.S. at 50-51. Specifically, the "grotesquely" shaped north Florida majority-minority district in the Special Master's plan (District 3) flaunts *Gingles*'s requirement that the African-American minority be "sufficiently large and geographically compact to constitute a majority in a single-member district." *Gingles*, 478 U.S. at 50-51; *see also Jeffers*, 730 F. Supp. at 202 (applying

[5] The Humphrey intervenors disagree with the characterization of District 23 as a mere "influence" district. Although the African-American VAP in District 23 is less than fifty percent, the evidence showed that African-Americans will have the opportunity to elect candidates of their choice in that district. Thus, African-Americans will have more than "influence" in District 23.

[6] Again, the Humphrey intervenors are reluctant to characterize these districts as "influence" districts. Under the Humphrey intervenors' plan, Districts 3 and 7 would have African-American VAPs of 47.45 percent and 46.58 percent, respectively. According to Humphrey, the evidence showed that African-American voters in these north and central Florida districts would be able to elect the candidates of their choice.

Gingles test in single-member district case); *Turner v. Arkansas*, 784 F. Supp. 553, 568 (E.D. Ark. 1991) (same). District 3 is a political unit incapable of meaningful representation and indicates that the Special Master improperly sought to achieve proportional representation, contrary to the provisions of the Voting Rights Act. In south Florida, the House defendants argue that the Special Master's plan inappropriately focuses upon the creation of Cuban-American districts, rather than Hispanic districts. The Voting Rights Act makes no such distinctions among language minority sub-groups. Contrastingly, the House defendants' plan would draw two south Florida districts with Hispanic VAPs over sixty-five percent, without unnecessarily splintering Dade County's "Anglo, Jewish, and retirement" communities of interest. The House defendants further argue that the independent expert and Special Master inappropriately relied upon "party competitiveness" as the exclusive measure of fairness, ignoring other measures such a "political bias" and "seats votes/ ratio" [sic]. Finally, the House defendants contend that the independent expert and Special Master chose a "separatist" interpretation of the Voting Rights Act. They warn this court against using the Voting Rights Act to promote "political apartheid." (Quoting *Burton v. Sheehan*, slip op. at 50 n.47).

PART V—INCORPORATION OF DOCUMENTS

We expressly incorporate the Special Master's and Independent Expert's Reports. *See* Appendix C. We also expressly incorporate into this order the curative rules regarding contiguity. *See* Appendix B.

PART VI—CONCLUSION

After careful study and review of controlling precedent, redistricting plans submitted to the court, the Special Master's Report with attachments, and objections to the Special Master's Report, including oral argument, this

court declares the current congressional districts unconstitutional. Because the state of Florida does not have a scheme other than legislative passage of a congressional districting plan, the voters of Florida will suffer a deprivation of constitutional and statutory rights unless this court imposes a plan.

VII—CERTIFICATE

Pursuant to Rule 54(b), Federal Rules of Civil Procedure, the court determines that there is no just reason for delay in entry of judgment regarding congressional redistricting. Accordingly, by separate judgment, as required by law, this court orders the state of Florida to conduct the 1992 congressional elections and congressional elections thereafter in districts as shown by plan 308, which this court deems the "1992 Florida Redistricting Plan."

Dated at Tallahasse, Florida, this 29th day of May, 1992.

/s/ Joseph W. Hatchett
JOSEPH W. HATCHETT
United States Circuit Judge

/s/ William Stafford
WILLIAM STAFFORD
United States District Judge

/s/ Roger Vinson
ROGER VINSON
United States District Judge

APPENDIX E

SUPREME COURT OF FLORIDA

No. 79,674

IN RE: CONSTITUTIONALITY OF SENATE JOINT RESOLUTION 2G, SPECIAL APPORTIONMENT SESSION 1992

[May 13, 1992]

GRIMES, J.

This is an original proceeding in which the attorney general petitions this Court for a declaratory judgment determining the validity of Senate Joint Resolution 2G apportioning the legislature of the State of Florida. We have jurisdiction under article III, section 16(c) of the Florida Constitution, which provides:

> (c) JUDICIAL REVIEW OF APPORTIONMENT. Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

The Florida Legislature began preparing for the 1992 reapportionment in 1988. Each chamber hired separate expert technical staff and provided them with state-of-the-art computer systems. Committees on Reapportionment in both chambers were appointed in 1991 and

charged with the responsibility of aiding the legislature in developing legislative and congressional plans. The House and Senate cohosted 32 public hearings throughout the state between September 19, 1991, and December 4, 1991. Their purpose was to increase public awareness on reapportionment and to receive public input prior to the development or adoption of any redistricting or reapportionment plans.

Notwithstanding, the legislature was unable to agree on a plan of legislative reapportionment during the regular 1992 session. Pursuant to article III, section 16(a) of the Florida Constitution, the governor then reconvened the legislature in a special apportionment session. During that session, Senate Joint Resolution 2G was adopted. Three days later, on April 13, 1992, the attorney general filed this petition for review of the apportionment plan. Adversary interests have filed briefs presenting their views, and the matter has been orally argued before the Court.

In analyzing the validity of the reapportionment plan, we begin by addressing the issue of the plan's validity under the equal protection standard of one person, one vote. Equal protection requires that state legislatures be apportioned in such a way that each person's vote carries the same weight—that is, that each legislator represents the same number of voters. *Reynolds v. Sims*, 377 U.S. 533 (1964). This determination necessarily requires an analysis of population figures in each district.

Joint Resolution 2G apportions the state into 120 House districts and 40 Senate districts.[1] Florida's population is 12,937,926.[2] Therefore, the ideal population per single-

[1] All districts in both the House and the Senate are single-member districts.

[2] Population figures are those reported in the United States Decennial Census of 1990, upon which the legislature based the apportionment plan.

member House district is 107,816 (the total state population divided by 120 districts). The largest House district is District 80, with a population of 108,460—deviating from the ideal population by 644 people, or 0.60%. The smallest House district is District 111, with a population of 106,317—deviating from the ideal population by 1,499 people, or 1.39%. Therefore, the maximum percentage deviation between the largest and smallest number of people per representative (statistical overall range) is 1.99%.

The ideal population per single-member Senate district is 323,448 (the total state population divided by 40 districts). The largest Senate district is District 31, with a population of 324,815—deviating from the ideal population by 1,367 people, or 0.42%. The smallest Senate district is District 26, with a population of 322,007—deviating from the ideal population by 1,441 people, or 0.45%. Therefore, the maximum percentage deviation between the largest and smallest number of people per senator (statistical overall range) is 0.87%.

Although the districts do not comply precisely with the ideal population per district, mathematical exactness is not a requirement in state apportionment plans. *Reynolds*, 377 U.S. at 577 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable."). In the plan at issue here, the deviations from ideal population are minimal. *See Brown v. Thomson*, 462 U.S. 835, 842 (1983) (as a general matter, apportionment plans with a maximum population deviation under 10% fall within the category of minor deviations); *Connor v. Finch*, 431 U.S. 407, 418 (1977). We find that the legislature has made a good-faith effort to achieve mathematical preciseness in the districts and has complied with the equal protection requirements of both the Florida and United States Constitutions.

We next address the Florida Constitution's requirement that legislative districts be "either contiguous, overlapping or identical territory." Art. III, § 16(a), Fla. Const. This Court has defined "contiguous" as " 'being in actual contact: touching along a boundary or at a point.' " *In re Apportionment Law, Senate Joint Resolution 1 E*, 414 So. 2d 1040, 1051 (Fla. 1982) (quoting *Webster's New Collegiate Dictionary* 245 (1973)). A district lacks contiguity "when a part is isolated from the rest by the territory of another district" or when the lands "mutually touch only at a common corner or right angle." *Id.*

Several parties challenge the contiguity of four Senate districts—districts 1, 8, 18, and 24. These parties assert that it is impossible to travel throughout these districts without crossing into another district. This impossibility of travel is not strictly a result of the configuration of the districts, however, but rather a result of the lack of roads in some areas or the presence of bodies of water without connecting bridges.

Although a contiguous district has been defined as one in which a person can go from any point within the district to any other point without leaving the district, such a definition does not impose a requirement of a paved, dry road connecting all parts of a district. Contiguity does not require convenience and ease of travel, or travel by terrestrial rather than marine forms of transportation. As the court noted in *Mader v. Crowell*, contiguity " 'does not mean in contact by land. Certainly, so far as . . . islands are concerned, they may be considered contiguous, although separated by wide reaches of navigable deep waters.' " 498 F. Supp. 226, 229 (M.D. Tenn. 1980) (emphasis deleted) (quoting *Board of Supervisors v. Blacker*, 52 N.W. 951, 953 (Mich. 1892)). Indeed, given the number of islands included within the territory of Florida, declaring that a district lacks contiguity when water separates its parts would invalidate any reapportionment plan that does not make an unconnected island a district in and of itself.

We hold, therefore, that the presence in a district of a body of water without a connecting bridge, even if it necessitates land travel outside the district in order to reach other parts of the district, does not violate this Court's standard for determining contiguity under the Florida Constitution. From our examination of the instant record, including detailed maps, we find that the districts as apportioned in the Joint Resolution satisfy the geographic requirements of the Florida Constitution.

The most contested issue before us is whether the Joint Resolution discriminates against any racial or language minority by minimizing its voting strength. The parties disagree with the standard by which we should address this issue. In order to explain their arguments, a brief historical discussion is required.

Congress enacted the Voting Rights Act of 1965 pursuant to authority granted by the Fifteenth Amendment to the United States Constitution. Section 2 of the Act provided that "[n]o voting qualifications or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973 (Supp. III 1965-1967). Section 5 of the Act prohibited any changes in voting procedures in certain designated areas of the country wherein discrimination had been most flagrant without first obtaining preclearance from the United States Attorney General or a declaratory judgment from the United States District Court for the District of Columbia. 42 U.S.C. § 1973c. The Voting Rights Act was later enlarged to cover language minorities, including Hispanics. 42 U.S.C. § 1973b(f) (1976).

From 1965 to 1980, those challenging apportionment plans under the Voting Rights Act were not required to prove deliberate discrimination in order to succeed. However, in *City of Mobile v. Bolden*, 446 U.S. 55 (1980), a plurality of the United States Supreme Court held that

under the Voting Rights Act it was necessary for the plaintiffs to prove that the disputed plan was conceived as or operated as a purposeful device to further racial discrimination. In essence, *Bolden* required proof of what was in the minds of the legislators who enacted or retained the voting law alleged to be discriminatory.

In 1982, Congress reacted to *Bolden* by amending section 2 of the Voting Rights Act to eliminate the requirement of proving legislative intent to discriminate in order to establish a voting-rights claim. Pub. L. No. 97-205, 96 Stat. 131, 134 (1982). Under the amendment, section 2 was violated where the totality of circumstances revealed that "the political processes leading to nomination or election . . . are not equally open to participation by members of a [protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b) (1982). The extent to which members of a protected class had been elected to office was deemed to be a circumstance which may be considered. At the same time, however, Congress also provided that nothing in section 2 established a right to have members of a protected class elected in numbers equal to their proportion in population. The effect of the 1982 amendment was to substitute a "results" test for the "intent" test required by *Bolden*.

The 1982 amendment to the Voting Rights Act was considered by the United States Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), a case involving a section 2 challenge to certain multimember districts in North Carolina. The Court held that plaintiffs challenging a redistricting plan must prove at least the following threshold conditions: (1) that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) that the minority group is politically cohesive; and (3) that in the absence of special circumstances, bloc voting by the white

majority usually defeats the minority's preferred candidate.[3] *Id.* at 50-51. If these threshold requirements have been proven, certain objective factors must then be considered by the court in determining whether, from "the totality of the circumstances," a section 2 violation has been shown. These totality factors, which were derived from the Senate Judiciary Committee majority report that accompanied the 1982 amendment to section 2, include the following: (1) the extent of the history of official voting-related discrimination; (2) the extent of racially polarized voting; (3) the extent to which the state or political subdivision has used unusually large election districts, majority-vote requirements, anti-single-shot provisions, or other voting practices that tend to enhance the opportunity for discrimination; (4) the denial of minority

[3] A memorandum on Reapportionment Issues filed in this Court by Jon Mills of the Center for Governmental Responsibility at the University of Florida explains:

> In the case of demonstrating ethnically or racially polarized voting, the part of the "totality of circumstances" test where the courts have insisted on the most rigorous analysis, at least two sets of statistical tests must be run:
>
> a. Homogeneous or extreme case analysis of voting patterns, and
>
> b. Ecological regression analysis of voting patterns.
>
> The reason these two tests must be simultaneously run is that from a statistical standpoint, inference from one about the voting patterns of a district/county, or any segment of it, will be subject to the ecological fallacy, a fatal error in interpreting statistical tests. The "ecological fallacy" means that inferences about voting behavior of a large group (either majority or minority), based on a small sample of homogeneous precincts, are potentially specious. Similarly, inferences about the voting behavior of segments of the population based on area-wide analysis are equally fallacious. Simply put, the secret ballot protects the individual voter, as well as making simplistic conclusions about voting patterns impossible. Therefore, both sets of tests must be run concurrently and simultaneously, and the results of both evaluated before appropriate inferences about polarized and/or block voting can be inferred.

access to the candidate-slating process; (5) the extent to which members of the minority group bear the effects of discrimination in areas such as education, employment, and health, which hinder effective participation in the political process; (6) whether political campaigns have been characterized by racial appeals; (7) the extent to which members of the protected class have been elected to public office; (8) whether there is a significant lack of responsiveness by elected officials to the particularized needs of the minority group; and (9) whether the policy underlying the use of the voting qualification, standard, practice, or procedure is tenuous. *Id.* at 44-45.

In this Court's review of the 1982 legislative reapportionment, we addressed minority challenges to certain districts. *In re Apportionment Law, Senate Joint Resolution 1 E.* At that time, we stated that the sole question to be considered in the apportionment process was "the facial constitutional validity" of the apportionment plan. 414 So. 2d at 1052. Because this was before the 1982 amendment to the Voting Rights Act, we cited *City of Mobile v. Bolden* for the proposition that it was necessary for the minority challenger to prove invidious discrimination by evidence which showed that the plan was motivated by an intent to discriminate. Finding no evidence in the record of purposeful discrimination, we upheld the plan against the minority challenge.

Referring to our opinion in *In re Apportionment Law, Senate Joint Resolution 1 E*, the proponents of the Joint Resolution suggest that claims under the federal Voting Rights Act are not facial constitutional claims and need not be considered in this proceeding. Alternatively, they argue that in light of the Florida Constitution's requirement of a ruling on the validity of the Joint Resolution within 30 days, this Court cannot go beyond a facial evaluation of the resolution. Given the complex evidentiary standard imposed on those who challenge a redistricting

plan under the Voting Rights Act,[4] the proponents argue that this Court cannot possibly consider such a claim at this time.

The opponents of the plan assert that we cannot fulfill our duty to determine whether the Joint Resolution complies with the federal constitution without finding that the plan meets the standards of the Voting Rights Act, which was passed to implement the federal constitution. They also argue that in view of the Supremacy Clause of the United States Constitution, we cannot constitutionally determine that the Joint Resolution complies with the federal constitution if it violates a federal statute. *See Howlett ex rel. Howlett v. Rose*, 110 S. Ct. 2430, 2438 (1990) ("Federal law is enforceable in state courts . . . because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature."). The several opponents suggest different methods by which we should resolve the matter, such as: (1) declaring the Joint Resolution facially invalid; (2) disregarding the 30-day requirement of article III, section 16(c) of the Florida Constitution, and referring the case to a judge to conduct the fact-finding analysis contemplated by the Voting Rights Act; or (3) withholding ruling and deferring to the pending federal court action on the subject.[5]

We cannot accept the narrow view that we should completely ignore the effect of the Voting Rights Act. Article III, section 16(c) requires us to determine "the validity of the apportionment." The Voting Rights Act obviously affects the validity of the Joint Resolution. Therefore, to the extent that we can do so under our own constitution,

[4] *See, e.g.*, Jeffers v. Clinton, 730 F. Supp. 196 (E.D. Ark. 1989) (conducting analysis of Voting Rights Act claims after hearing evidence for 12 days).

[5] DeGrandy v. Wetherell, No. TCA 92-40015-WS (N.D. Fla. filed Mar. 27, 1992).

we believe we are obligated to consider the Voting Rights Act in our evaluation of the validity of the plan. At the same time, it is impossible for us to conduct the complete factual analysis contemplated by the Voting Rights Act, as interpreted in *Thornburg v. Gingles*, within the time constraints of article III, section 16(c). However, our analysis will include a consideration of all of the statistical data filed herein, including the breakdown of white, black, and Hispanic voting-age populations and voting registrations[6] in the legislative districts contained in the Joint Resolution and in other proposed plans,[7] none of which are disputed. We shall be guided in our analysis by the law applicable to the Voting Rights Act. Any decision which requires consideration of facts that are unavailable in our analysis will have to be resolved in subsequent litigation, as explained later in this opinion.

In addressing the minority representation under the Joint Resolution, we begin by noting that the plan includes 13 black majority population House districts that are dispersed throughout the state where large and compact populations exist. These districts are number 8 (Gadsden and Leon), number 14 (Duval), number 15 (Duval), number 39 (Orange), number 55 (Hillsborough, Manatee, and Pinellas), number 59 (Hillsborough), number 84 (Palm Beach), number 93 (Broward), number 94 (Broward), number 103 (Dade), number 104 (Dade), number 108 (Dade), and number 109 (Dade). In addition, three so-called black influence districts[8] containing black popu-

[6] No voter registration statistics for Hispanics have been furnished.

[7] We have permitted all interested parties to file alternative apportionment plans in support of their arguments with respect to whether or not the Joint Resolution impermissibly discriminates against a minority group.

[8] Our use of the term influence districts refers to those in which the minority voting strength exceeds 25% but is less than 50%. The benefit to minorities in the creation of influence districts is sub-

lations from 29% to 33% are created: number 3 (Escambia), number 23 (Alachua and Marion), and number 118 (Dade).

Nine Hispanic majority population districts are created in the House. These districts are mainly in Dade County, since data reflects that the vast majority of the Hispanic population is geographically concentrated there. The Hispanic majority districts are number 102 (Collier and Dade), number 107 (Dade), number 110 (Dade), number 111 (Dade), number 112 (Dade), number 113 (Dade), number 114 (Dade), number 115 (Dade), and number 117 (Dade). Seven additional Hispanic influence districts are created: number 58 (Hillsborough), number 103 (Dade), number 106 (Dade), number 109 (Dade), number 116 (Dade), number 118 (Dade), and number 119 (Dade). The Hispanic population in these districts range from 26% to 46%.

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ject to debate. Some courts and commentators argue that by creating "super-minority" or influence districts the overall impact of the minority vote is actually diluted. Basically, according to this viewpoint, influence districts create a political apartheid, packing members of a minority into a single district in which, assuming racial bloc voting, they can never actually elect a candidate, since they are not a majority, and at the same time creating solid pockets surrounding the influence districts with no minority presence whatsoever, solidifying the power of the white majority. The counter-argument is that even without a voting majority, a district containing substantial voting strength can exert a meaningful influence on the outcome of elections and with the benefit of white crossover voting even elect minority candidates. The United States Supreme Court reserved ruling on the issue of the cognizability of a claim under the Voting Rights Act where the minority group seeks the creation of an influence district, rather than a majority district. Thornburg v. Gingles, 478 U.S. 30, 46 n.12 (1986). Federal courts are split on the issue of whether a section 2 claim can be brought where the minority is not sufficiently large and geographically compact to create an effective majority district. *Compare* Turner v. Arkansas, 784 F. Supp. 553, 564 (E.D. Ark. 1991) (no actionable claim for failure to create influence district), *petition for cert. filed* (U.S. Apr. 8, 1992) (No. 91-1615) *with* Armour v. Ohio, 775 F. Supp. 1044, 1050-52 (N.D. Ohio 1991) (holding such a claim to be actionable).

The Joint Resolution creates 2 black majority population Senate districts: number 30 (Broward and Dade) and number 36 (Dade). There are also 3 black influence districts: number 2 (Duval, Alachua, St. Johns, Clay, and Putnam), number 14 (Orange and Seminole), and number 3 (Bay, Calhoun, Franklin, Gadsden, Gulf, Jackson, Jefferson, Leon, Liberty, Madison and Wakulla). The black population in these districts range from 28% to 49%. Finally, there are 3 Hispanic majority population Senate districts: number 34 (Dade), number 37 (Dade), and number 39 (Dade).

Voting-age population statistics for these districts are also available. Black voting-age population is consistently lower than the total black population. The Hispanic voting-age population generally approximates the total Hispanic population. However, in some instances, it is slightly higher. Presumably, the voting-age population more accurately reflects current voting strength, although a current analysis based on total population could become increasingly reliable as people continue to reach voting age during the 10-year period before the next reapportionment.

The Joint Resolution provides for 11 House districts with a black voting-age population of 50.1% or higher and 2 black influence districts containing black voting-age populations of 46% and 46.9%, respectively. There are 9 House districts with a Hispanic voting-age population of 63.8% or higher, and 2 additional Hispanic influence districts containing voting-age populations of 38.4% and 46.4%, respectively.

Finally, the Joint Resolution includes 2 Senate districts with a black voting-age population of 51.7% or higher and 1 district with a black voting-age population of 45%. There are also 3 Senate districts with a Hispanic voting-age population of 64.3% or higher.

The proponents also allege that there was a substantial undercount of minorities in the 1990 census and, there-

fore, the figures contained in the data before us do not truly represent minority voting strength. The proponents point out that the United States Department of Commerce acknowledged a substantial undercount of both blacks and Hispanics. Florida is an intervenor in a suit to compel an adjustment for the undercount.[9] In a separate action, the House has obtained an order requiring the Department of Commerce to release the adjusted data. This order has been stayed pending appeal to the Eleventh Circuit Court of Appeals.[10]

We first address the issue of retrogression. Miguel DeGrandy, et al., argue that the black population and voting-age percentages have been reduced in certain Senate and House districts. However, in restructuring all of the district lines, there is bound to be some retrogression in minority voting strength in some districts. It is more appropriate to look at the overall plan to see whether or not it discriminates against minorities. The 1982 House plan contained only 7 House districts with a black population of 52% or higher and 7 districts with a Hispanic population of 58% or higher. In the Senate, the 1982 plan contained only 1 district with a black majority population and only 2 districts with a Hispanic population of 55% or higher. *See In re Apportionment Law, Senate Joint Resolution 1E.* The Joint Resolution provides for the possibility of appreciably greater statewide minority representation than under the 1982 plan. Hence, there has been no retrogression in that respect, and instead minority representation has been enhanced.

We next address the issue of the effectiveness of the minority districts created by the Joint Resolution. Gwen

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[9] City of New York v. United States Dep't of Commerce, No. 88-Civ-3474 (E.D.N.Y. filed July 23, 1991).

[10] Florida House of Representatives v. United States Dep't of Commerce, No. 91-40387-WS (N.D. Fla. Oct. 10, 1991), *appeal filed* (11th Cir. Jan. 10, 1992) (No. 92-2022).

Humphrey, et al., argue that many of the districts containing a black voting-age population of more than 50% are not as "safe" for black voters as those which could have been created. In 2 of the House districts the black voter registration is approximately 45%, and in 1 of the Senate districts the black voter registration is 46.4%. However, in the balance of the districts complained of, there is actually a higher percentage of black voter registration than there is of black voting-age population. Further, as Common Cause points out, there are several current districts where blacks comprise less than 50% of the population in the district, yet the district regularly elects black candidates.[11] On this record, we conclude that the districts which the Joint Resolution characterizes as black districts do provide blacks with an effective opportunity to elect representatives of their choice. While other plans create black majority districts with a higher percentage of black voters, this does not mean that the districts as created here are ineffective—only that districts could have been created that may have been more effective. Furthermore, there is always the risk that in creating a district where the minority population is so high as to be unnecessarily safe the minority influence will be siphoned off from other districts.

Several opponents of the plan attack the number of minority districts, contending that more could have been created. In the Senate, for example, a proposed plan submited by DeGrandy, et al., provides 3 more black influence districts than does the Joint Resolution and 1 more Hispanic majority district.[12] In the House, a proposed plan

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[11] Common Cause refers to one black representative who continues to be elected in a district with only a 27.33% black population.

[12] No Senate plan submitted by the opponents improves upon the number of black voting-age majority districts created by the Joint Resolution, although the majority districts created in some other plans do have greater voting-age majorities. In fact, the Common Cause plan creates only 1 black majority district, although it pro-

submitted by DeGrandy provides 2 more black majority districts, 4 more black influence districts, and 2 more Hispanic majority districts.

Notwithstanding, even the proposed alternate plan which contains the highest number of minority districts does not surpass by a large margin the number of minority districts created under the Joint Resolution. Furthermore, even the opponents cannot agree on what should have been accomplished. For example, several opponents contend that in Hillsborough County, rather than fragmenting the black community among 3 districts, as the Joint Resolution does, an additional black influence district should have been created. However, the NAACP stated at oral argument that it was not in favor of creating a strong black voting district in Hillsborough County because the black community there is not sufficiently compact and does not have sufficiently cohesive interests to create an effective influence district.

Some opponents accept most aspects of the Joint Resolution but contend that certain areas should have had an additional minority majority or influence district, or that some of the minority districts have a population which is insufficient to be truly effective, or that some districts have a minority population which is too high, resulting in dilution of the minority representation in surrounding districts. For example, the NAACP plan does not differ substantially from that created by the Joint Resolution. In the Senate the number of black majority districts and the number of black influence districts are the same under both plans. In the House both the NAACP and the Joint Resolution include the same number of black majority districts, but the NAACP plan creates 2 additional black

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vides for 2 additional black influence districts. It must be understood, that our use of the term majority district refers only to population or voting-age majorities. As noted by Common Cause, districts which do not contain minority population or voting-age majorities may in fact be safe minority districts.

influence districts. In fact, in considering just the area of Escambia County, plans submitted by the opponents ranged from splitting the county into 3 Senate districts, 1 of which has a black majority, to leaving the county intact in a single white majority district.

After carefully examining the briefs and alternative plans submitted by opponents of the Joint Resolution, we conclude that it may be that an additional Hispanic majority House district could have been created in Dade County. It may be that a stronger black influence Senate district could have been created in the Hillsborough County area and a stronger black House district could have been created in Escambia County. It may also be that the two House districts which contain a slight black majority voting-age population but only a 45% black registered voter population might have been strengthened. In fact, there may be a better plan. However, our job is not to select the best plan, but rather to decide whether the one adopted by the legislature is valid.

Given the limitations of our review, including both time constraints and the unavailability of specific factual findings, we conclude that the Joint Resolution does not discriminate against minorities. The plan is a material improvement over conditions under the 1982 plan, is not significantly less favorable to minorities than other proposed plans, and provides a substantial opportunity for minorities to influence elections and elect representatives of their choice.

Finally, several of the opponents observe that the Joint Resolution is nothing more than a gerrymandering effort by the Democratic majority of the legislature to protect Democratic incumbents.[13] We have little doubt that

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[13] Ironically, we have received letters from two Dade County Democratic representatives complaining that the Joint Resolution improperly dilutes the voting strengths of two compact and cohesive white areas in its effort to create more minority majority House districts.

politics played a large part in the adoption of this plan. However, the protection of incumbents, standing alone, is not illegal, *see Republican Party v. Wilder*, 774 F. Supp. 400 (W.D. Va. 1991), and none of the opponents seriously contend that the Joint Resolution is invalid because of political gerrymandering.[14]

Upon consideration, we conclude that Senate Joint Resolution 2G is valid and hereby approve it as the 1992 apportionment of the Florida legislature. We acknowledge that any interested person should have the opportunity to attempt to prove that the Joint Resolution is invalid through a presentation of evidence in accordance with the *Gingles* analysis of the Voting Rights Act. Therefore, our holding is without prejudice to the right of any protestor to question the validity of the plan by filing a petition in this Court alleging how the plan violates the Voting Rights Act. In such event, this Court will provide for an expedited disposition through the appointment of a commissioner to make findings of fact. *See Milton v. Smathers*, 351 So. 2d 24 (Fla. 1977). Thus, we retain exclusive state jurisdiction to consider any and all future proceedings relating to the validity of this apportionment plan. No motion for rehearing will be entertained.

It is so ordered.

McDONALD, BARKETT, KOGAN and HARDING, JJ., concur.

OVERTON, J., concurs with an opinion.

SHAW, C.J., dissents with an opinion.

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[14] We have also received complaints that certain smaller Florida cities have been unnecessarily divided in two by the Joint Resolution. While these are legitimate concerns, in most cases they appear to be an inevitable result of the legal requirements to draw district lins in such a manner as to provide significant minority voting strength. In any event, we cannot say that the legislature's determination to divide certain cities in the manner in which it did causes the Joint Resolution to be invalid.

OVERTON, J., concurring.

I concur in the majority opinion. In doing so, I suggest there is a more efficient and less expensive process to develop a reapportionment plan. The 1978 Constituton Revision Commission proposed an amendment to the constitution that would create an independent reapportionment commission. In that proposal, the members of the commission could not be elected officials, and the commission would be the only entity involved in developing a reapportionment plan. That constitutional proposal, although defeated with all the other constitution revision commission proposals in 1978, was uniformly considered noncontroversial and a major improvement in how a reapportionment plan should be developed for this state.

I suggest that the 1978 constitutional revision proposal be reexamined by the legislature for placement on the ballot at the next general election. The reapportionment commission proposal reads as follows:

> SECTION 16. Legislative and congressional reapportionment.—
>
> (a) REAPPORTIONMENT MANDATE. In each year ending in one, the state shall be divided into: as many congressional districts as there are United States Representatives apportioned to the state; not less than thirty or more than forty senate districts; and not less than eighty or more than one hundred and twenty representative districts. All legislative districts shall be single-member districts.
>
> (b) REAPPORTIONMENT COMMISSION. In each year ending in zero and at any other time of court-ordered reapportionment, a commission shall be established to prepare a reapportionment plan for congressional and state legislative districts. The commission shall consist of seven electors, none of whom may be elected public or party officers or employees of the state legislature. The president of the senate,

the speaker of the house of representatives, the minority leader of the senate, the minority leader of the house of representatives, and the chairperson of the political party which received the second highest vote in the last gubernatorial election shall each submit to the governor and make public a list of not less than three persons. By July 1 of the same year, the governor shall appoint one person from each list and one additional person. Within thirty days after the appointments have been made, the six commissioners shall select by a vote of at least four commissioners a seventh commissioner, who shall serve as chairperson. Failure to select the seventh commissioner within the time prescribed shall constitute an impasse which shall automatically discharge the commission. A new commission shall then be appointed in the same manner as the original commission. The legislature shall establish by law the qualifications of commissioners, the procedures for their selection and for the filing of vacancies, and the duties and powers of the commission. The legislature shall appropriate funds to enable the commission to carry out its duties.

(c) REAPPORTIONMENT STANDARDS.

(1) Congressional districts and state legislative districts for each respective house shall be as nearly equal in population as is practicable, based on the population reported in the federal census taken each year ending in zero. In no case shall a congressional district have a population which varies by more than one percent from the average population of all congressional districts in the state. In no case shall a single state legislative district have a population which carries by more than five percent from the average population of all districts of a house. In no case shall the average of the absolute values of the population deviations of all districts of the respective

house vary by more than two percent from the average population of all districts. Any population variance must be justifiable as necessary for compliance with one or more of the other standards set forth in this section. The commission shall have the burden of justifying any variance between the population of a district and the average population of all districts.

(2) Districts shall be composed of convenient contiguous territory and, consistent with subsection (1), shall be drawn to coincide with the boundaries of local political subdivisions.

(3) Districts shall be compact in form. The aggregate length of all district boundaries shall be as short as practicable consistent with the standards contained in subsections (1) and (2). In no case shall the aggregate length of the boundaries of all districts of a house, as well as of all districts within a local political subdivision that has a population sufficient to establish two or more districts, exceed by more than five percent the shortest possible aggregate length of all the districts under any other plan that is consistent with the other standards contained in this constitution.

(4) The commission shall prepare a plan that is equitable to all electors. In preparing a plan, the commission shall not use demographic information or information about incumbent legislators, the political affiliations of registered voters, or previous election results for the purpose of favoring any political party, incumbent legislator, or any other person or group.

(5) No district shall be drawn for the purpose of diluting the voting strength of any language or racial minority group.

(d) JUDICIAL REVIEW OF APPORTIONMENT. Within 15 days after the submission of an

apportionment plan by the commission, the Attorney General shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment plan. The supreme court, in accordance with its rules, shall permit adversary interests to present their views, and, within 60 days from the filing of the petition, shall enter its judgment. Should the supreme court determine the apportionment plan to be invalid in whole or in part, the governor shall reconvene the commission which shall, within 30 days, adopt an apportionment plan conforming to the judgment of the supreme court. A revised plan shall be subject to judicial review by the supreme court in the same manner as the original plan.

Florida Constitution Revision Commission Proposed Revision to the Florida Constitution of 1968 art. III, § 16, Fla. Const. (Florida Constitution Revision Commission 1978) (on file in the Florida Legislative Library, The Capitol).

SHAW, C. J., dissenting.

I am unable to accept the majority's conclusion that the proposed plan passes muster under section 2 of the Voting Rights Act. I believe that Florida's longstanding and pervasive history of discrimination against minorities has combined with the presently existing districting plan to effectively deprive minority voters of an equal opportunity to elect representatives of their choice. Under the existing plan, an average of 11 blacks and 6 Hispanics have been elected to the 120-member state House at each election during the past ten years. During the same period, an average of 2 blacks and 1 Hispanic have been elected to the 40-member state Senate. The proposed plan offers little realistic hope for change.

I. BACKGROUND

Article III, section 16(c), Florida Constitution, provides the constitutional basis for the present proceeding:

> (c) JUDICIAL REVIEW OF APPORTIONMENT. Within fifteen days after the passage of the joint resolution of apportionment, the attorney general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

Art. III, § 16(c), Fla. Const.

I agree with the majority that this Court must consider section 2 of the Voting Rights Act in its present inquiry. Because this proceeding is an inquiry into the validity of a proposed plan rather than a challenge to an existing plan, however, *Thornburg v. Gingles*, 478 U.S. 30 (1986), while informative, is not dispositive. Since neither our state constitution nor federal precedent provides clear

guidance relative to this constitutional inquiry under the Voting Rights Act, I look to the Act itself for direction.

Section 2 of the Voting Rights Act was amended in 1982 to ban election practices that have a discriminatory effect, as well as those that have a discriminatory purpose. The amended Act reads as follows:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.
>
> (b) *A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.* The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C. § 1973 (1982) (some emphasis added).

The Senate Judiciary Committee majority report accompanying the bill of amendment sets out a nonexclusive list of factors ("Senate Report factors") that may typically be considered under the totality of the circumstances:

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise participate in the domestic process;
>
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision hear the effect of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in their jurisdiction.

S. Rep. No. 417, 97th Cong., 2d Sess. 28-29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 206-07 (footnote omitted). The committee further provided:

> While these enumerated factors will often be the most relevant ones, in some cases other factors will be indicative of the alleged dilution [of minority votes]. The cases demonstrate, and the Committee intends that there is no requirement that any par-

ticular number of factors be proved, or that a majority of them point one way or the other.

Id. at 207. A section 2 inquiry as envisioned by Congress ordinarily embraces a "fact-intensive test" of the "past and present reality" within the jurisdiction. *Gingles*, 478 U.S. at 45-46.

II. FACIAL VALIDITY

Although this Court cannot in the present proceeding conduct the kind of fact-intensive analysis required in a direct challenge to an existing plan under the Voting Rights Act, I believe we have sufficient information before us to carry out our constitutional inquiry into the proposed plan's validity. We should first evaluate the presently existing legislative districting plan under the Act, using the Senate Report factors as a guide and taking into account both the historical information before this Court concerning statewide discrimination in election practices and statistical information concerning the opportunity of minorities under the existing plan to elect representatives of their choice. We should then compare the existing and proposed plans to determine if deficiencies in the existing plan have been corrected or simply repeated in a nonmeaningful reshuffling of districts. We should also appraise the realistic effectiveness of the proposed black and Hispanic majority districts in light of accepted criteria concerning the correlation between total minority population, voting-age population, registered voters, and voting patterns. Using these criteria, I find the proposed plan invalid—there is simply no reasonable basis to conclude that the plan would pass muster under a full, fact-intensive section 2 challenge.

Although I am aware of section 2's disclaimer that minorities have no right under the Act to be elected in numbers equal to their proportion of the general population, the Act does nevertheless compel us as a matter of common sense to consider the bottom-line figure of elected

minority representatives, so I cannot close my eyes to the fact that under the 1990 census, Florida's total population was 12,937,926, of which 1,759,533, or 14%, was black, and 1,573,318, or 12%, was Hispanic. "The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered." 42 U.S.C. § 1973(b) (1982). This criterion has been recognized by the federal Court as one (along with racial bloc voting) of the two most important Senate Report factors. *Gingles*, 478 U.S. at 48 n.15.

III. SENATE REPORT FACTORS

A. *History of Official Discrimination*

Florida has a longstanding general history of official discrimination against minorities that has influenced the electoral process. For example, our state constitution of 1885 provides:

> § 8. Poll tax
>
> Section 8. The Legislature shall have power to make the payment of the capitation tax, a prerequisite for voting, and all such taxes received shall go into the school fund.

Art. VI, § 8, Fla. Const. (1885), *reprinted in* 25 Fla. Stat. Ann. 568 (1970).

> § 12. White and colored; separate schools
>
> Section 12. White and colored children shall not be taught in the same school . . . .

Art. XII, § 12, Fla. Const. (1885), *reprinted in* 25 Fla. Stat. Ann. 617 (1970).

> § 24. Intermarriage of white persons and negroes prohibited
>
> Section 24. All marriages between a white person and a negro, or between a white person and a

> person of negro descent to the fourth generation, inclusive, are hereby forever prohibited.

Art. XVI, § 24, Fla. Const. (1885), *reprinted in* 25 Fla. Stat. Ann. 645 (1970). As recently as 1967, section 350.20, Florida Statutes, provided in part:

> The Florida public service commissioners may prescribe reasonable rules and regulations relating to the separation of white and colored passengers in passenger cars being operated in this state by any railroad company or other common carrier.

Section 1.01(6), Florida Statutes (1967), further stated in part:

> The words "negro," "colored," "colored persons," "mulatto" or "persons of color," when applied to persons, including every person having one-eighth or more of African or negro blood.

In addition to the state's record of general discrimination against minorities, federal precedent has addressed numerous recent discriminatory election practices in Florida, including at-large election schemes, white primaries, majority-vote requirements, and candidate filing fees. *See, e.g. Solomon v. Liberty County*, 899 F.2d 1012 (11th Cir. 1990) (en banc), *cert. denied*, 111 S. Ct. 670 (1991); *Tallahassee Branch of NAACP v. Leon County*, 827 F.2d 1436 (11th Cir. 1987), *cert. denied*, 488 U.S. 960 (1988); *McMillan v. Escambia County*, 748 F.2d 1037 (5th Cir. 1984); *NAACP v. Gadsen County School Board*, 691 F.2d 978 (11th Cir. 1982); *James v. City of Sarasota*, 611 F. Supp. 25 (M.D. Fla. 1985). Because of this history of disfranchisement, it was not until 1964 that a majority of Florida's adult black citizens were registered to vote.

B. *Racially Polarized Voting*

"'[R]acial polarization' exists where there is 'a consistent relationship between [the] race of the voter and the way in which the voter votes,' or to put it differently,

where 'black voters and white voters vote differently.'" *Gingles*, 478 U.S. at 53 n.21 (citation omitted). The results of Florida's legislative elections over the past ten years establish the presence of this factor. Whites consistently elected whites when they constituted a majority within a district, and blacks elected blacks.

Redistricting following the 1980 census took place in Florida in 1982. During subsequent years, blacks and Hispanics were elected to the following state legislative seats (listed in number of seats and percentage of total House and Senate seats):

HOUSE (120 seats)

Year	Black seats	Hispanic seats
1982-84	10(8%)	3(2.5%)
1984-86	10(8%)	7(6%)
1986-88	11(9%)	7(6%)
1988-90	10(8%)	7(6%)
1990-92	12(10%)	7(6%)

SENATE (40 seats)

Year	Black seats	Hispanic seats
1982-84	2(5%)	0(0%)
1984-86	2(5%)	0(0%)
1986-88	2(5%)	0(0%)
1988-90	2(5%)	2(5%)
1990-92	2(5%)	3(7.5%)

During these years, only 5 blacks were elected to the state House from districts wherein blacks did not constitute a clear majority.[15] Two of these representatives[16]

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[15] Al Lawson, Jr., 1982-90, from District 9 (33% black under both 1980 and 1990 counts); Cynthia Chestnut, 1990, from District 23 (26% under 1980 census, and 27% under 1990 census); Tim Jamerson, 1982-90, from District 55 (49% and 56%); Bill Clark, 1982-90, from District 91 (45% and 60%); and Daryl Jones, 1990, from District 118 (26% and 29%).

[16] Tim Jamerson and Bill Clark.

came from districts[17] wherein blacks constituted a near majority under the 1980 census (49% and 45%) and clear majority under the 1990 census (56% and 60%). The remaining 3[18] came from districts[19] wherein blacks constituted a significant portion of the population under both the 1980 (33%, 26%, and 26%) and 1990 (33%, 27%, and 29%) counts. Of these 3 districts, only 1 elected a black representative more than once, and this was apparently an anomaly.[20] During this period, no Hispanic was elected to the House from a district wherein Hispanics did not constitute a clear majority.

During these same years, only 1 black was elected to the state Senate from a district wherein blacks did not constitute a clear majority.[21] This district contained a near majority of blacks under both the 1980 (49%) and 1990 (48%) counts. No Hispanic was elected to the Senate from a district wherein Hispanics did not constitute a clear majority.

Conversely, at each election during this period, in every district wherein blacks constituted a clear or near majority under either census, voters chose to be represented by a black legislator in the House.[22] The same is true of the Senate.[23] At each election subsequent to 1982, in every district wherein Hispanics constituted a clear majority,

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[17] Districts 55 and 91.

[18] Al Lawson, Jr., Cynthia Chestnut, and Daryl Jones.

[19] Districts 9, 23 and 118.

[20] District 9 elected Al Lawson, Jr., from 1982 to 1990.

[21] Arnett Girardeau, 1982-90, from District 7 (49% black under 1980 census, and 48% under 1990).

[22] Districts 16, 17, 40, 55, 63, 91, 106, 107, and 108 elected black representatives to the House at every election following the 1982 redistricting.

[23] Districts 7 and 36 elected black senators at every election following the 1982 redistricting.

voters chose to be represented by a Hispanic representative in the House.[24] The same is true of the Senate for elections held subsequent to 1988.[25]

C. *Election of Minority Officials*

Minorities have historically been underrepresented in Florida politics. Although significant portions of Florida's population traditionally have been black or Hispanic, blacks were unable to elect a single representative to the state House from 1889 to 1968. No black representative to the state Senate was elected from the time of Florida's inception until ten years ago, in 1982. No Hispanic state senator was elected until four years ago, in 1988. Florida has sent no black representative to Congress in over a century. Only 1 Hispanic congressperson serves from Florida.

IV. COMPARISON OF PRESENT AND PROPOSED PLANS

Proponents of the proposed plan argue that it differs from the existing plan by providing substantially greater opportunity for minorities to elect representatives of their choice. A comparison of the two plans, however, reveals no real change when the growth of minority populations over the past decade within existing districts as demonstrated by the 1990 census is considered.[26]

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[24] Districts 105, 109, 110, 111, 112, 113, and 115 have elected Hispanic representatives at every election from 1984 onward.

[25] Districts 33 and 40 elected Hispanic senators at every election from 1988 onward. District 34 elected a Hispanic senator at the 1990 election.

[26] The existing plan for House districts, in place since 1982, embraces 7 black majority districts under the 1980 census, 9 under the 1990 count, 12 black influence districts under the 1980 census, and 16 under the 1990 count. The plan includes 7 Hispanic majority House districts under the 1980 census, 7 under the 1990 count, 4 Hispanic influence districts under the 1980 census, and 8 under the 1990 count. As to the Senate, the existing plan embraces 1

In redrawing district lines for the House, the legislature has created 4 additional black majority districts, eliminated 13 black influence districts, created 2 additional Hispanic majority districts, and eliminated 1 Hispanic influence district. In redrawing Senate lines, the legislature has created 1 additional black majority district, retained the same number of black influence districts, eliminated 1 Hispanic majority district, and created 2 Hispanic influence districts. Thus, while the proposed plan offers change over the existing plan, it does little to increase the opportunity for minority representation, and in some instances actually decreases it. To the extent the plan benefits minorities, the changes are minor when compared to the historical underrepresentation and substantial inability miniorities in Florida have experienced in electing legislators of their choice throughout the past decade.

V. EFFECTIVENESS OF PROPOSED PLAN

In evaluating the effectiveness of the districting plans in fostering the opportunity of minorities to elect representatives of their choice, courts have recognized that minority concentrations substantially above 50% total population ("super-majorities") are often required because minority populations generally have more persons below voting age than do white populations. Also, voter registration and turnout among minorities oftentimes is decreased because of the lingering effects of past discrim-

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black majority district under the 1980 census, 1 under the 1990 count, 3 black influence districts under the 1980 census, and 4 under the 1990 count. The plan includes 2 Hispanic majority Senate districts under the 1980 census, 4 under the 1990 count, 2 Hispanic influence districts under the 1980 census, and none under the 1990 count.

The proposed plan for House districts embraces 13 black majority districts, 3 black influence districts, 9 Hispanic majority districts, and 7 Hispanic influence districts. The plan also includes 2 black majority Senate districts, 4 black influence districts, 3 Hispanic majority districts, and 2 Hispanic influence districts.

inatory practices that may have rendered registration and voting unduly burdensome or futile. *See* Kimball Brace et al., *Minority Voting Equality: The 65 Percent Rule in Theory and Practice*, 10 Law & Pol'y 43 (1988).

Taking these factors into account, the proposed plan is seriously flawed. While the plan for the House contains 13 black majority districts based on total population, only 11 of these contain black majority voting-age populations, and only 9 contain a majority of registered black voters.[27] As to the Senate, only 1 district contains a majority of registered black voters.

Even under the best-case scenario under the proposed plan, i.e., if blacks and Hispanics elected representatives of their choice in each of the proposed districts wherein they constituted a clear or poor majority board on total population (if blacks elected 13 representatives to the House and 3 senators, and Hispanics elected 9 representatives to the House and 3 senators), their representatives would still comprise only a fraction of the total these minorities make up of Florida's population. This is hardly a meaningful improvement over the existing apportionment plan.

VI. ALTERNATIVE PLANS

Numerous alternative plans were submitted to both the legislature and this Court showing that minorities are sufficiently large in numbers and geographically compact to constitute majority populations within additional districts that are reasonably configured and would give minorities significantly greater opportunity to elect representatives of their choice. For instance, alternative plan 292 provides for 15 House districts wherein blacks would constitute a majority of the total population (the proposed plan has 13). Both alternative plan 292 and the Reaves & Brown plan provide for 11 House districts

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[27] Unfortunately, voter registration information for Hispanics under the proposed plan was unavailable.

wherein Hispanics would constitute a majority of the total population (the proposed plan has 9). Most significant, the Reaves & Brown alternative plan provides for 6 black majority Senate districts (the proposed plan has 2), and several alternative plans (plan 275, and those submitted by Reaves & Brown, Kiser, and Common Cause) provide for 4 Hispanic majority Senate districts (the proposed plan has 3).

VII. CONCLUSION

In my opinion, opponents of the plan have successfully demonstrated that there is no reasonable basis to conclude that the plan would pass muster under a full, fact-intensive section 2 challenge. Opponents have adequately established the presence of a number of Senate Report factors and have shown the existing plan flawed. While the proposed plan offers change, it fails to significantly foster the opportunity for minorities to elect representatives of their choice. Any appearance of true positive change is illusory. Under the proposed plan, many minority citizens in Florida will be unable to elect representatives of their choice.

Based on the foregoing, I find the plan invalid.

Original Proceeding—Apportionment Law

Robert A. Butterworth, Attorney General; Richard E. Doran, Assistant Deputy Attorney General; Gerald B. Curington, Senior Assistant Attorney General and George L. Waas, Assistant Attorney General, Department of Legal Affairs, Tallahassee, Florida, on behalf of the Attorney General;

Stephen N. Zack, Norman C. Powell and Scott L. Warfman of Zack, Hanzman, Ponce & Tucker, Miami, Florida, on behalf of The Florida Senate;

Kevin X. Crowley and James A. Peters of Cobb, Cole & Bell, Tallahassee, Florida, on behalf of the Florida House of Representatives; and

Mark S. Levin, Tallahassee, Florida, on behalf of Simon Ferro, State Chairman, Florida Democratic Party,

Proponents

George N. Meros, Jr. of Rumberger, Kirk & Caldwell, Tallahassee, Florida, and E. Thom Rumberger and Daniel J. Gerber of Rumberger, Kirk & Caldwell, Orlando, Florida, on behalf of interested parties: Miguel DeGrandy, Andy Ireland, Van B. Poole, Republican Party of Florida, Luis Rojas, Javier Sauto, Alberto Cardenas, Luis Morse, Karen E. Butler, Jean Van Meter, Robert Woody, Mario Diaz-Balart, Casimer Smericki, Terry Ketchel, Rodolfo Garcia, Jr., Roberto Casas, Lincoln Diaz-Balart, Justo Luis Pozo, Rey Velazquez, Alberto Gutman, Sgt. Augusta Carter, Ana M. Pinnellas and Carlos Valdes;

Larry K. White, Tallahassee, Florida and Brenda White of Lawyers' Committee for Civil Rights Under Law, Washington, D.C., on behalf of interested parties: Gwen Humphrey, Vivian Kelly, Gerald Adams, Wilmateen W. Chandler, Dr. Percy L. Goodman, Jesse L. Nipper, Moease Smith, and Carolyn L. Williams;

Parker D. Thomson and Carol A. Licko of Thomson, Muraro & Razook, P.A., Miami, Florida, on behalf of Common Cause;

Charles G. Bull of Charles G. Bull, P.A., Tampa, Florida, Harry L. Lamb of Perry & Lamb, P.A., Orlando, Florida, and Dennis Courtland Hayes and Willie Abrams, NAACP Special Contribution Fund, Baltimore, Maryland, on behalf of the Florida State Conference of NAACP Branches;

Henry C. Hunter and Charles E. Vanture, Tallahassee, Florida, and Rodney G. Gregory of the Law Offices of Rodney G. Gregory, Jacksonville, Florida, on behalf of interested parties: Darryl Reaves, Corrine Brown and James Hargarett; and

Betty T. Ferguson, President of People's Positive Action Council (UP-PAC), Miami, Florida,

Opponents

APPENDIX F

ORDER LIST

THURSDAY, JULY 16, 1992

ORDER IN PENDING CASE

A-32

T. K. WETHERELL, SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES, *et al.*

v.

MIGUEL DE GRANDY, *et al.*

The application for stay presented to Justice Kennedy and by him referred to the Court is granted and it is ordered that the judgment of the United States District Court for the Northern District of Florida, filed July 2, 1992 in case Nos. 92-40015-WS, 92-40131-WS and 92-40220), is stayed pending the timely filing of a statement as to jurisdiction. Should such a statement be timely filed, this order is to remain in effect pending this Court's action on the appeal. In the event the judgment is affirmed, or the appeal is dismissed, this order is to terminate automatically. Should jurisdiction be noted or postponed, or should the judgment be summarily vacated or reversed, this order is to remain in effect pending the sending down of the judgment of this Court.

APPENDIX G

ORDER LIST

FRIDAY, JULY 17, 1992

ORDER IN PENDING CASE

A-51

T. K. WETHERELL, SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES, *et al.*

v.

MIGUEL DE GRANDY, *et al.*

The application for stay presented to Justice Kennedy and by him referred to the Court is granted and it is ordered that the order of the United States District Court for the Northern District of Florida, dated July 16, 1992 in case Nos. 92-40015-WS, 92-40220, is stayed pending the timely filing of a statement as to jurisdiction. Should such a statement be timely filed, this order is to remain in effect pending this Court's action on the appeal. In the event the judgment is affirmed, or the appeal is dismissed, this order is to terminate automatically. Should jurisdiction be noted or postponed, or should the judgment be summarily vacated or reversed, this order is to remain in effect pending the sending down of the judgment of this Court.

APPENDIX H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No. 92-40015-WS

MIGUEL DE GRANDY, *et al.*,
Plaintiffs,

-vs-

T.K. WETHERELL, in his official capacity, *et al.*,
Defendants.

Case No. 92-40220-WS
(Consolidated)

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

STATE OF FLORIDA, *et al.*,
Defendants.

NOTICE OF APPEAL

[Filed Jul. 24, 1992]

Notice is hereby given that Defendants T. K. Wetherell and Peter Wallace, Defendants in the above-captioned action, hereby appeal to the United States Supreme Court from the Judgment of the three-judge District Court entered in this action on July 2, 1992.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

KEVIN X. CROWLEY
Fla. Bar #0253286

/s/ James A. Peters
JAMES A. PETERS
Fla. Bar #0230944

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Counsel for Defendants T.K. Wetherell
and Peter Wallace

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No. TCA 92-40015WS

MIGUEL DE GRANDY, *et al.*,
Plaintiffs,

and

GWEN HUMPHREY, *et al.*,
Intervenors,

-vs-

T.K. WETHERELL, in his official capacity, *et al.*,
Defendants.

Case No. TCA 92-40131-WS

FLORIDA STATE CONFERENCE OF NAACP
BRANCHES, *et al.*,
Plaintiffs,

-vs-

LAWTON CHILES, in his official capacity, *et al.*,
Defendants.

Case No. TCA 92-40220-WS

UNITED STATES OF AMERICA,
Plaintiffs,

-vs-

STATE OF FLORIDA, *et al.*,
Defendants.

NOTICE OF APPEAL

[Filed Jul. 29, 1992]

Defendants, Lawton Chiles, Jim Smith, Robert A. Butterworth, and the State of Florida, by and through under-

signed counsel, appeal to the Supreme Court of the United States the three-judge district court's judgment entered on July 2, 1992, granting an injunction with respect to the enforcement of Florida's state-wide reapportionment plan SJR 2G. This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

/s/ Richard E. Doran
RICHARD E. DORAN
Assistant Deputy Attorney General
Florida Bar No. 0325104

GERALD B. CURINGTON
Assistant Attorney General
Florida Bar No. 0224170

GEORGE L. WAAS
Assistant Attorney General
Florida Bar No. 0129967

APPENDIX J

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Case No. 92-40015-WS

MIGUEL DE GRANDY, *et al.*,
Plaintiffs,

-vs-

T.K. WETHERELL, in his official capacity, *et al.*,
Defendants.

Case No. 92-40220-WS
(Consolidated)

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

STATE OF FLORIDA, *et al.*,
Defendants.

HOUSE DEFENDANTS' EMERGENCY MOTION FOR RECONSIDERATION, REHEARING, RELIEF FROM ORDER

The House Defendants, pursuant to Rule 59 and Rule 60, Fed.R.Civ.P., move for rehearing, reconsideration, and relief from this Court's ore tenus remedial order of July 1, 1992 [1] For the reasons more fully stated below, this

[1] This Motion is without prejudice to jurisdictional and other arguments which may be asserted by these Defendants by appeal of the Court's finding of liability and remedy.

Court's Order requiring implementation of De Grandy House Plan 348 is premised on a misapprehension of the extent and ramifications of that plan on districts and counties and cities and citizens who should not otherwise be affected by the matters placed at issue before this Court. The Order represents an excessive exercise of the Court's remedial power. The House Defendants otherwise submit they are entitled to relief from the Remedial Order as that Order is premised on a misrepresentation to the Court as to the impact of the De Grandy plan on three of the most densely populated counties of this state.

MEMORANDUM OF LAW

This case, proceeding to hearing, finding of liability, and ore tenus remedial order has moved at a break neck speed. The matters adjudicated last night arose from a Complaint and Amended Complaint filed just last week. These Complaints were determined by this Court to be "at issue" on Noon on Friday, June 26, 1992, and the hearing commenced less than one-half hour thereafter. Varying protests of surprise were claimed throughout the hearing by even the Plaintiffs.[2] The extraordinary pace by which the liability phase of the case was alleged and adjudicated —6 days—is exceeded by the pace in which the remedy phase of the case was completed—3 hours. Indeed, the plan adopted by the Court and ordered for implementation evidences on its face that it was prepared (by Republican

[2] Plaintiffs even claimed surprise because of the House and Senate Defendants advancement of the citizenship issue in the context of the first *Gingles* prong "sufficiently large and geographically compact so as to constitute a majority in a single member district". This Court openly expressed its concern as to the appropriate legal determination of that fundamental issue in the midst of the hearing after being advised of the holding in *Romero v. City of Pomona*, 883 F.2d 1418 (9th Cir. 1989). ". . . only those individuals eligible to vote can be counted in determining whether a minority group can constitute a voting majority of a single-member district."

Party operatives) at 4:15 P.M. on the very day its implementation was ordered.

Minimal discussion and argument of the impact of the then proposed plan occurred over a two hour period and involved little more than select data attached to the plan and unsworn argument of Plaintiff De Grandy concerning his perspective of the "ripple" impact of the plan and his views of the community in which he is running for office. Testimony concerning an impact of the plan on other people and parts of the state, including the black, Jewish, and Anglo populations and constituents in Dade, Broward, Palm Beach, Collier, and Monroe counties was nil because there was no opportunity to evaluate the plan for these purposes. Even the presentation of the limited analysis the House staff could prepare in 1½ hours was curtailed just as the Broward overlay map was about to be displayed to the Court.

The House defendants urge that the genesis of this plan and this Court's implementation of it under these circumstances represents a gross departure from fundamental requirements of Federal law. This departure disserves the interests and rights of the vast majority of the communities and citizens in the Southeast corner of Florida.

As the Eleventh Circuit recognized in *Tallahassee Branch of NAACP v. Leon County, Florida*, 827 F.2d 1436 (11th Cir. 1987):

> . . . federal courts must defer to the judgment of a state legislative body in the area of reapportionment. Principles of federalism and common sense mandate deference to a plan which has been legislatively enacted. First, the elected representatives of the people understand the existing political system and the changes which would result from reapportionment. Rarely, if ever, will the federal district court have the benefit of such insight. Second, political compromise can produce a voting system tailored to the city,

> county, or state to be reapportioned. The district court, however, is required blindly to lay voting lines with mathematical exactness. Third, federalism is preserved when reapportionment is performed by a legislative body of the state. Reapportionment produces a fundamental change in state government and affects who will represent the people. Consequently, that determination is best left to the people rather than the federal judiciary.

This Court lacks that insight and should not be lured into fracturing the product of legitimate political compromises in the so-called "ripple area".

As recognized by the Fifth Circuit in *Marshall v. Edwards*, 582 F.2d 927, 934 (5th Cir. 1978) "The Supreme Court has put tight reins on judicial power to reapportion because of the judiciary's uneasy position in these cases. The least representative branch of the government must take care when it reforms the most representative branch". The admonition from the Fifth Circuit is rooted in more fundamental case law from the United States Supreme Court. That authority affirms that legislative reapportionment is a matter for legislative consideration and determination. *Reynolds v. Sims*, 377 U.S. 533 (1964).

Because Federal Courts, in contrast to the Legislature, have no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name, the Court must proceed into the political thicket of reapportionment with caution and objectivity.

> In the wake of a legislature's failure to constitutionally reconcile these conflicting state and federal goals, however, a Federal Court is left with the unwelcome obligation of performing in the Legislature's stead, while lacking the political authoritiveness that the Legislature can bring to the task. In such circumstances, the Court's task is inevitably an exposed

> and sensitive one that must be accomplished circumspectly in a matter free from any taint of arbitrariness or discrimination".

Roman v. Sincock, 377 U.S. 695, 710 (1973). *Connor v. Finch*, 431 U.S. 407, 414 (1976) (The courts must minimize friction between their remedies and legitimate state policies). *See also Upham v. Seamon*, 456 U.S. 37 (1982).

Under no circumstances can the scenario of the evening of July 1, 1992 be characterized as one of circumspection. Similarly, both the source of De Grandy plan # 348, the hurried subjective manner of its presentation by the Plaintiff, and the total absence of resources and objective measures for evaluation poison any arguable legitimacy of the plan.

Indeed, by contrast, even the hurried process in the remedies phase of the congressional part of this case last month evidences an improvement from last evening's summary evaluation of this eleventh hour fix. The House Defendants respectfully direct this Court to its own files and to the Court appointed Expert's and Special Master's explanations of the objectivity of their plan to appreciate the circumspection that is required.

As a final ground, Defendants seek relief from ordered implementation under the requirements of Rule 60(b)(3) based upon misrepresentation as to the "ripple" on areas other than the area of concentration of Hispanics in Dade County. Representations were that the "ripple" was minimal and that the plan's effect on Broward and Palm Beach counties was insignificant. Without benefit of even the meager demonstrative exhibits, overlays, and objective data which the House was able to muster during the 1½ hour period granted, this Court accepted those representations.

As more fully evidenced in the attached reports, the impact of the implementation of the De Grandy plan on the

districts and citizens and communities of interest in Dade, Broward, and Palm Beach, and other counties is profound.[3] The remedy affects not only the Hispanics' demand for two more districts in Dade—from 9 to 11—but fundamental communities of interest, county boundaries, city boundaries, and even the Democrat/Republican composite in the so-called "ripple area". The "ripple" is really a political tidal wave.

The true effect on black populations remains to be fully developed and argued and the NAACP last night expressed its concern accordingly. In some areas the plan should be characterized as a "judicialmander" by which this Court has entered, plowed, and unknowingly reseeded the "political thicket" for a November 1992 bumper crop of Republican victories.

As recognized in the June 19, 1992 three-judge decision from the United States District Court for the District of Arizona in *Arizonas for Fair Representation v. Symington*, Case No. 92-256-PHX-SMM

> Interim use of a plan is necessitated by the "proximity of a forthcoming election and the mechanics and complexities of the state's election laws." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *Terrazas v. Clements*, 537 F.Supp. 514, 537 (N.D. Texas 1982); *see also Upham v. Seamon*, 456 U.S. 37, 43 (1982) (recognizing that district courts have authority to order or to permit elections to be held that "do not in all respects measure up to the legal requirements, even constitutional requirements."). As the Supreme

[3] To this extent, the remedy violates the severability clause of SJR 2-G.

> If any provision of this joint resolution or the application thereof to any person or circumstances, or to any senatorial or representative district established in this joint resolution is held invalid, the invalidity shall not affect other provisions or applications of this joint resolution, or any other districts established in this joint resolution. . . .

> Court in *Upham* acknowledged: "Necessity has been the motivating factor in these situations."

Upham, 456 U.S. at 44. Like the situation in Arizona, necessity should here be the motivating factor because Florida's primary election, like that in Arizona, is during the first week of September. The state plan should be the interim plan.

CONCLUSION

The De Grandy court ordered plan, created and imposed at the eleventh hour with a total absence of objective review, unnecessarily and illegally traumatises the counties and citizens in Florida's Gold Coast, compromises and destroys the communities of interest and political coalitions the citizens of those areas, and further violates the review process required by controlling Supreme Court precedent. It is another surprise, but of more profound consequences.

Consistent with the policies articulated above and most recently recognized by the District Court in Arizona, this Court should amend its July 1, 1992 ore tenus Order by directing the implementation of SJR 2-G or by commencing appropriate procedures to insure that any plan of this Court is free of the arbitrariness, political bias, and surprise of the eleventh hour De Grandy cure.

Respectfully submitted,

KEVIN X. CROWLEY
Fla. Bar. # 0253286

/s/ James A. Peters
JAMES A. PETERS
Fla. Bar # 0230944

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315 S. Calhoun Street—Suite 500
Tallahassee, Florida 32301
(904) 681-3233
Counsel for House Defendants

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF LEON)

I, George H. Meier, the undersigned being first duly sworn upon oath, do hereby depose and state as follows:

1. I am employed by the Florida House of Representatives as Staff Director of the Committee on Reapportionment.

2. As Staff Director, I am proficient in the use of computers to draw legislative and congressional districting plans and to review and analyze plans. My responsibilities have included reviewing redistricting plans prepared on other computer systems and imported into the Committee's computer system.

3. I have had the opportunity to examine and compare DeGrandy Plan 292 (See Attachment A), hereinafter referred P 292, submitted to this Court by the plaintiffs and the modified DeGrandy Plan (See Attchment B), hereinafter referred to as M 292, presented to this court on the evening of July 1, 1992. Neither DeGrandy Plan was ever introduced into the legislative process, therefore the legislature was never presented with the opportunity to consider these plans.

4. My comparison of P 292 and M 292 indicates that they are significantly different plans. The modified plan is not simply P 292 with some minor modifications to incorporate the DeGrandy Plan into the Florida Plan. It is a completely new plan. Not a single district has remained intact between P 292 and M 292.

3. The M 292 Plan alters the boundaries of 31 districts in the Florida Plan (over 25 percent of the districts in the Florida House of Representatives). These changes extend far beyond Dade County: Monroe, Collier, Broward, and Palm Beach Counties are all effected by the modifications. It is not necessary to alter the districts in

Collier, Monroe and Palm Beach and two-thirds of Broward County to incorporate the Dade County minority districts in the original DeGrandy Plan into the Florida Plan. Two of the counties in which districts have been altered by M 292 are counties covered under Section 5 of the Voting Rights Act. These districts in Collier and Monroe counties had previously been reviewed by the Department of Justice and approved for implementation.

4. It is possible to create eleven majority Hispanic voting age population districts and four majority African-American districts wholly within Dade County. Such a plan would have no effect on districts or counties in which no Section 2 violation was alleged or which are covered by Section 5 of the Voting Rights Act.

5. On July 1, 1992, at the direction of Rep. Peter Wallace, Chairman of the House Reapportionment Committee, my staff and I prepared a remedial plan which would contain eleven majority Hispanic districts and have minimal impact on any districts outside of Dade County. The plan was drawn to serve as a remedial plan if this court found a Section 2 violation in Dade County. The plan was completed after 3:00 p.m. on July 1, 1992. This was the first plan prepared by our committee that included eleven Hispanic districts since we believed that such a plan would not create a sufficient number of safe Hispanic districts.

FURTHER AFFIANT SAYETH NOT.

/s/ George M. Meier
GEORGE M. MEIER

Sworn to and subscribed before me, this 2nd day of July 1992.

/s/ Barbara A. Payne
Notary Public
My Commission Expires:
April 11, 1993

AFFIDAVIT

STATE OF FLORIDA)
COUNTY OF LEON)

I, Kimball W. Brace, the undersigned being first duly sworn upon oath, do hereby depose and state as follows:

1. I am President of Election Data Services, Inc., a political consulting firm located in Washington, D.C. which specializes in reapportionment, redistricting, the Census, and political analysis. EDS, Inc. has been contracted by the Florida House of Representatives's Reapportionment Committee for the past three years to collect and analyze political election returns for use in redistricting.

2. I have been asked by the Florida House to review the modified DeGrandy plan adopted by this court on July 1, 1992 to determine the partison impact of the plan. It is my view that the DeGrandy plan will have a significant partison impact. The plan unnecessary [sic] pairs numerous incumbents.

3. To determine the partison impact of the modified-DeGrandy plan, I have compiled a report that lists the incumbents that have been placed together in a district. (See Attachment A.) In addition, I reviewed election return data to determine the political leanings of the new districts.

4. The modified-DeGrandy plan places 19 incumbents into districts with fellow incumbents. Of these incumbents, 14 are Democrats. In my experiences in redistricting I have never reviewed a plan with so many incumbents paired in so few counties.

5. The plan creates eight sets of pairings, including three districts in which three incumbents have been placed in a single district. There is one district that includes three Democratic incumbents within a strongly Democratic seat (#101), another district that has two Democrats and one Republican but leans strongly Republican (#93), and a third district that includes two Republicans and a Democrat which leans Republican (#112).

6. There are three strongly Democratic districts that each combine two Democratic incumbents together (#96, 104, & 106). Two other districts place a Democrat and a Republican together (#92 & 115), but each of them are fairly strongly Republican.

7. The modified-DeGrandy plan creates eight open seats, however only four of them lean Democratic. The other four are strongly Republican.

8. There is one non-pairing situation where a Democratic incumbent (Rep. Graber in district #100) is placed in a seat that tilts Republican.

9. Specifically, in district #92, Democratic Rep. Rayson was placed in a district with Republican Rep. Hanson. The district leans strongly Republican, and its Republican performance was enhanced compared to the original DeGrandy plan 292 that was presented to this Court. In addition, the original DeGrandy 292 plan kept these two incumbents in separate districts.

10. District 93 contains the homes of Democratic Reps. Stafford and Mackenzie, along with that of Republican Rep. Sanderson. This seat is safely Republican and would in all probability lead to the defeat of both Democrats.

11. District 96 contains the pairing of two Democrats, Reps. Deutsch and Ostrau, in a safely Democratic seat.

12. District 97 is an open seat that shows only slight Democratic leanings. It could possibly be won by a Republican.

13. In total, it is my assessment that the imposition of the modified-DeGrandy plan could lead to the defeat of at least 7, and as many as 11, current Democratic incumbents.

FURTHER AFFIANT SAYETH NOT.

/s/ Kimball W. Brace
KIMBALL W. BRACE

Sworn to and subscribed before me, this 2nd day of July 1992.

/s/ Barbara A. Payne
Notary Public
My Commission Expires:
April 11, 1993

PLAN 348

District	Incumbents	VAP %NHB	VAP %HISP
90	Clark (D)	56.29%	7.26%
91	Open	55.50%	7.52%
92	Rayson (D), Hanson (R)	1.01%	6.21%
93	Stafford (D), Mackenzie (D), Sanderson (R)	1.64%	5.46%
94	Tobin (D)	2.63%	5.08%
95	Young (D)	5.31%	14.83%
96	Deutsch (D), Ostrau (D)	4.00%	5.98%
97	Open	2.19%	11.10%
98	Lippman (D)	6.86%	8.59%
99	Open	5.08%	8.30%
100	Graber (D)	2.64%	6.32%
101	Geller (D), Silver (D), Abrams (D)	3.69%	10.89%
102	Open	53.09%	15.01%
103	Logan (D)	56.73%	21.01%
104	Bloom (D), Friedman (D)	4.02%	29.59%
105	Gutman (R)	1.58%	71.62%
106	Reaves (D), Gordon (D)	54.86%	24.38%
107	Burke (D)	54.33%	15.24%
108	Open	9.69%	81.89%
109	Rojas (R)	8.50%	63.74%
110	Garcia (R)	2.28%	62.56%
111	Morse (R)	6.87%	66.19%
112	Guber (D), Diaz-Balart (R), Valdes (R)	2.08%	65.10%
113	Hoffman (R)	7.92%	66.06%
114	Open	1.51%	66.39%
115	DeGrandy (R), Simon (D)	2.24%	68.52%
116	Open	3.24%	65.83%
117	Open	5.19%	66.24%
118	D. Jones (D)	39.01%	27.42%
119	Cosgrove (D)	6.12%	23.34%
120*	Saunders (D)	4.80%	13.90%

APPENDIX K

DECLARATION OF ALLAN J. LICHTMAN

I, Allan J. Lichtman, state the following:

1. I have previously submitted a declaration and testified in this case. I have been asked by the U.S. Department of Justice to analyze new information presented by the state on a) turnout data that may affect opportunities for Hispanics to elect candidates of their choice in various Hispanic districts in Dade County and b) estimates of the Hispanic citizen voting age population in these districts.

2. With respect to opportunities for Hispanic voters in Dade County districts, defendants have presented an analysis purporting to show district-specific turnout rates for State Senate districts. The state's data, taken from statewide general elections, may not accurately reflect turnout in Hispanic v. non-Hispanic state legislative elections. However, taking the state's estimates at face value, when combined with typical Hispanic cohesion and white crossover rates,[1] they show that Hispanics would have a realistic potential to elect legislative candidates of their choice in all 4 districts within the Reaves/Brown/Hargrett plan as well as all 3 districts within the state's plan. It is important to match the general election turnout presented by defendants with general election measures of Hispanic cohesion and non-Hispanic crossover.

[1] To keep the projections for the Hispanic candidates of choice conservative, I eliminated from the mean crossover rate the one election in which a majority of whites (62.6) voted for the Hispanic candidate of choice. Inclusion of this election would have raised the crossover rate from 28.5 percent to 32.3 percent and increased the projection of the vote for Hispanic candidates. Given the lack of significant black proportions in Hispanic districts and the lack of complete measurements in the state's data for black voting, the analysis for this declaration relies on estimates of white votes for the Hispanic candidate of choice (in every instance, the Hispanic candidate).

Measures of cohesion and crossover will be excerpted from Table 1 of my original declaration (that included both general elections and Republican primaries). The methodology used to project votes for candidates of choice of Hispanics is identical to the methodology I utilized as expert for the Department of Justice in *Garza v. Los Angeles County*. Results for the State's plan and the Reaves/Brown/Hargrett Plan are presented in Table 1 of this declaration.

3. The results reported in Table 1 corroborate the analysis presented in the earlier declaration. The projected vote for the Hispanic candidate of choice is at least several percentage points above 50 percent in all three districts in the state's plan and in three districts in the Reaves/Brown/Hargrett plan. In an additional district in the Reaves/Brown/Hargrett plan the projected vote for the Hispanic candidate of choice is just above 50 percent for the 1988 turnout and just below 50 percent for the 1990 turnout. Thus, compared to the state's plan there is one additional district in the Reaves/Brown/Hargrett which provides Hispanics a realistic potential to elect candidates of their choice.

4. I have also been asked to examine estimates presented by experts for the defendants on the percentage of citizen voting-age Hispanics in districts within the state's plan and the Reaves/Brown/Hargrett plan. These estimates are based on a regression analysis of the percentage of voting age citizens in block groups within Dade County and the corresponding percentages of Hispanics and of Cubans. The results of this analysis are not sufficiently reliable, however, to draw conclusions about the Hispanic citizenship percentage of any district within Dade County. The results appear to understate substantially the Hispanic citizenship percentage of Dade County districts.

5. The analysis presented in Table 2 uses the actual number of citizens in Dade County, supplied to me by the Department of Justice from the 1990 Census. As this

analysis demonstrates, estimates presented by experts for defendants understate by more than 80,000 persons the number of voting age citizens in Dade County. A prorated estimate of the number of missed Hispanic citizens equals 65,878. The addition of these missed Hispanic citizens increases the estimated Hispanic citizenship rate by nearly one-quarter, from 38.1% to 47.0%. The influence of the missed Hispanic citizens on Cuban versus non-Cuban Hispanic citizenship rates cannot be determined.

6. One source of the unreliability of the analysis presented by experts for defendants is a highly questionable means of performing the ecological regression analysis used to estimate citizenship rates. One hallmark of ecological regression analysis is that both the "dependent variable" and the "independent variable" be measured on a common base: that is the percentages have the same denominator.[2] In this case, the dependent variable, the percentage of citizens in a Census bloc is measured as a percentage of voting age population. This means that the independent variables should be likewise be measured as percentages of voting age population. The proper procedure for estimating the percentage of non-Cuban and Cuban Hispanics who are citizens would be to regress the percentage of the voting-age population who were citizens in each census block on the percentage of non-Cuban Hispanics among voting age persons in each block and the percentage of Cuban Hispanics among voting age persons in each block. In this way the Hispanic population is separated without overlap in the equation. As indicated in Attachment 1, however, the citizenship analysis presented to this court includes as its independent variables, "% Hispanic of persons" and "% Cuban of His-

[2] "Ecological regression requires that the ratios which comprise independent and dependent variables use the same denominator; 'ordinary' regression does not." James W. Loewen and Bernard Grofman, "Recent Developments in Methods Used in Vote Dilution Litigation," *The Urban Lawyer* 21 (1989), p. 592-93.

panic persons." The two independent variables in this analysis do not have common denominators. The % Hispanic of persons is measured as a percentage of the voting age population, but % Cuban of Hispanic persons is measured as a percentage of the Hispanic voting-age population. Thus the analysis does not cleanly separate the Hispanic voting age population and could produce erroneous estimates of citizenship rates. Without the opportunity to examine results of an analysis presented in standard form I would have serious questions about the reliability of the analysis performed by defendants' experts.

7. Table 3 applies the re-estimated Hispanic citizenship rate of 47.0 percent to districts within the state's plan and the Reaves/Brown/Hargrett plan. This is only a rough estimate of the percent of Hispanic voting age citizens in each district, but it does show results quite different from those presented by expert for defendants. In two of three districts in the state's plan, the estimated percentage of Hispanics among citizens is above 50 percent; in one district the estimated percentage is just below 50 percent. In three of four districts in the R/B/H plan, the estimated percentage of Hispanics among citizens is above 50 percent; in one district the estimated percentage is just below 50 percent.

Pursuant to 28 U.S.C. 1746, I declare, under penalty of perjury, that the foregoing is true and correct.

/s/ Allan J. Lichtman
ALLAN J. LICHTMAN
6/30/92

TABLE 1

PROJECTED VOTE FOR CANDIDATE OF CHOICE OF HISPANICS GENERAL ELECTIONS, TURNOUT ESTIMATES PRESENTED BY DEFENDANTS COHESION AND CROSSOVER DATA FROM 10 GENERAL ELECTIONS 1986-1990, HISPANIC V. NON-HISPANIC CONTESTS *

Hispanic Cohesion Rate=87.2% Non-Hisp. Crossover Rate=28.5

STATE PLAN

I. State Plan: District 39

1988: Percent Hispanic Voters=59.6%
1990: Percent Hispanic Voters=54.3%

1. 1988 Hisp Vote For Hisp Cand Of Choice= .872 * 59.6%=52.0%
2. 1988 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 40.4%=11.5%
3. 1988 Total Vote For Hisp Cand Of Choice= 52.0% + 11.5%=63.5%

1 1990 Hisp Vote For Hisp Cand Of Choice= .872 * 54.3%=47.3%
2. 1990 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 45.7%=13.0%
3. 1990 Total Vote For Hisp Cand Of Choice= 47.3% + 13.0%=60.3%

II. State Plan: District 37

1988: Percent Hispanic Voters=49.2%
1990: Percent Hispanic Voters=46.6%

1. 1988 Hisp Vote For Hisp Cand Of Choice= .872 * 49.2%=42.9%
2. 1988 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 50.8%=14.5%
3. 1988 Total Vote For Hisp Cand Of Choice= 42.9% + 14.5%=57.4%

1. 1990 Hisp Vote For Hisp Cand Of Choice= .872 * 46.6%=40.6%
2. 1990 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 53.4%=15.2%
3. 1990 Total Vote For Hisp Cand Of Choice= 40.6% + 15.2%=55.8%

TABLE 1: CONTINUED

Hispanic Cohesion Rate=87.2% Non-Hisp. Crossover Rate=28.5

III. State Plan: District 34

1988: Percent Hispanic Voters=44.1%
1990: Percent Hispanic Voters=41.7%

1. 1988 Hisp Vote For Hisp Cand Of Choice= .872 * 44.1%=38.5%
2. 1988 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 55.9%=15.9%
3. 1988 Total Vote For Hisp Cand Of Choice= 38.5% + 15.9%=54.4%

1. 1990 Hisp Vote For Hisp Cand Of Choice= .872 * 41.7%=36.4%
2. 1990 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 53.4%=16.6%
3. 1990 Total Vote For Hisp Cand Of Choice= 36.4% + 16.6%=53.0%

REAVES/BROWN/HARGRETT PLAN

I. R/B/H Plan: District 34

1988: Percent Hispanic Voters=52.9%
1990: Percent Hispanic Voters=50.4%

1. 1988 Hisp Vote For Hisp Cand Of Choice= .872 * 52.9%=46.1%
2. 1988 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 47.1%=13.4%
3. 1988 Total Vote For Hisp Cand Of Choice= 46.1% + 13.4%=59.5%

1. 1990 Hisp Vote For Hisp Cand Of Choice= .872 * 50.4%=43.9%
2. 1990 Non-Hisp Vote For Hisp Cand Of Choice= .285 * 49.6%=14.1%
3. 1990 Total Vote For Hisp Cand Of Choice= 43.9% + 14.1%=58.0%

II. R/B/H Plan: District 33

1988: Percent Hispanic Voters=47.3%
1990: Percent Hispanic Voters=43.1%

1. 1988 Hisp Vote For Hisp Cand Of Choice= .872 * 47.3%=41.2%

2. 1988 Non-Hisp Vote For Hisp Cand Of Choice = .285 * 52.9% = 15.1%
3. 1988 Total Vote For Hisp Cand Of Choice = 41.2% + 15.1% = 56.3%

1. 1990 Hisp Vote For Hisp Cand Of Choice = .872 * 43.1% = 37.6%
2. 1990 Non-Hisp Vote For Hisp Cand Of Choice = .285 * 56.9% = 16.2%
3. 1990 Total Vote For Hisp Cand Of Choice = 37.6% + 16.2% = 53.8%

III. R/B/H Plan: District 40

1988: Percent Hispanic Voters = 45.5%
1990: Percent Hispanic Voters = 42.9%

1. 1988 Hisp Vote For Hisp Cand Of Choice = .872 * 45.5% = 39.7%
2. 1988 Non-Hisp Vote For Hisp Cand Of Choice = .285 * 54.5% = 15.5%
3. 1988 Total Vote For Hisp Cand Of Choice = 39.7% + 15.5% = 55.2%

1. 1990 Hisp Vote For Hisp Cand Of Choice = .872 * 42.9% = 37.4%
2. 1990 Non-Hisp Vote For Hisp Cand Of Choice = .285 * 57.1% = 16.3%
3. 1990 Total Vote For Hisp Cand Of Choice = 37.4% + 16.3% = 53.7%

III. R/B/H Plan: District 35

1988: Percent Hispanic Voters = 37.8%
1990: Percent Hispanic Voters = 34.8%

1. 1988 Hisp Vote For Hisp Cand Of Choice = .872 * 37.8% = 33.0%
2. 1988 Non-Hisp Vote For Hisp Cand Of Choice = .285 * 62.2% = 17.7%
3. 1988 Total Vote For Hisp Cand Of Choice = 33.0% + 17.7% = 50.7%

1. 1990 Hisp Vote For Hisp Cand Of Choice = .872 * 34.8% = 30.3%
2. 1990 Non-Hisp Vote For Hisp Cand Of Choice = .285 * 65.2% = 18.6%
3. 1990 Total Vote For Hisp Cand Of Choice = 30.3% + 18.6% = 48.9%

TABLE 2

CITIZENSHIP ESTIMATES FOR DADE COUNTY PRESENTED BY EXPERTS FOR DEFENDANTS COMPARISON WITH ACTUAL NUMBERS OF CITIZENS IN DADE COUNTY

Estimated Voting-Age Citizenship Rate For Non-Hispanics: 85.8%
Estimated Voting-Age Citizenship Rate For Hispanics: 38.1%
Non-Hispanic Voting Age Population: 727,238
Hispanic Voting Age Population: 741,846

Estimated # Of Non-Hispanic Citizens = .858 * 727,238 = 623,970
Estimated # Of Non-Hispanic Non-Citizens = 727,238 − 623,970 = 103,268
Estimated # Of Hispanic Citizens = .381 * 741,846 = 282,643
Estimated # Of Non-Hispanic Non-Citizens = 741,846 − 282,643 = 459,203

Total Estimated # Of Citizens = 623,970 + 282,643 = 906,613

Actual # Of Citizens = 987,346

Number Of Citizens Underestimated = 906,613 − 987,346 = 80,733

Underestimates Prorated For Hispanics And Non-Hispanics:

1. Percent Of Hispanics Among Estimated Non-Citizens = 459,203/(103,268 + 459,203) = 81.6
2. Prorated # Of Missed Hispanic Citizens = .816 * 80,733 = 65,878
3. Reestimated Percentage Of Hispanic Citizenship Rate = (282,643 + 65,878)/741,846 = 47.0

TABLE 3

REESTIMATED PERCENTAGE OF HISPANIC VOTING AGE CITIZENS IN DISTRICTS
STATE PLAN, REAVES/BROWN/HARGRETT PLAN

STATE PLAN

I. STATE PLAN: District 39
Percent Hispanic Voting Age Population: 76.1
Percent Hispanic Citizen Voting Age Population =
(.761*.47)/(.761*.47 + .239*.858) = 63.6%

II. State Plan: District 34
Percent Hispanic Voting Age Population: 66.3
Percent Hispanic Citizen Voting Age Population =
(.663*.47)/(.663*.47 + .337*.858) = 51.9%

II. State Plan: District 37
Percent Hispanic Voting Age Population: 64.3
Percent Hispanic Citizen Voting Age Population =
(.643*.47)/(.643*.47 + .357*.858) = 49.7%

REAVES/BROWN/HARGRETT PLAN

I. R/B/H Plan: District 33
Percent Hispanic Voting Age Population: 66.8
Percent Hispanic Citizen Voting Age Population =
(.668*.47)/(.668*.47 + .332*.858) = 52.4%

II. R/B/H Plan: District 34
Percent Hispanic Voting Age Population: 65.0
Percent Hispanic Citizen Voting Age Population =
(.650*.47)/(.650*.47 + .350*.858) = 50.4%

III. R/B/H Plan: District 35
Percent Hispanic Voting Age Population: 65.7
Percent Hispanic Citizen Voting Age Population =
(.657*.47)/(.657*.47 + .343*.858) = 51.2%

IV. R/B/H Plan: District 40
Percent Hispanic Voting Age Population: 62.1
Percent Hispanic Citizen Voting Age Population =
(.621*.47)/(.621*.47 + .379*.858) = 47.3%

ATTACHMENT 1

Methodology for determining percentage of voting-age population who are citizens in Dade County, Florida.

Using 1990 census data, the group percentage of voting-age population who were citizens in each census block was regressed on the percentage of persons who were Hispanic and the percentage of Hispanic persons who were Cuban. The regression analysis yielded the following:

% of VAP who are citizens

= .858 − .602 (% Hispanic of persons) + .211 (% Cuban of Hispanic persons)
R^2 = .62

Illustrations of the Practical meaning. . . .

Block group composition	% of VAP who are citizens
100% nonhispanic	85.8%
0% Cuban, 100% Hispanic	25.6%
100% Cuban	46.7%
59.3% Cuban, 100% Hispanic	38.1%

(59.3% of Hispanic persons in Dade County are Cuban)

APPENDIX L

FLORIDA SUPREME COURT BRIEF EXCERPTS

1. "This Court cannot fulfil its duty to determine that the Joint Resolution complies with the Federal Constitution unless it first finds that the plan meets the standards of the Voting Rights Act. Like few other statutes, the Voting Rights Act is fundamental extension of the fourteenth and fifteenth amendment right of all citizens to vote. Further, in view of the Supremacy Clause, this Court cannot constitutionally determine that a state plan complies with the Federal Constitution if, in fact, that plan violates a federal statute. Howlett v. Rose, 110 S.Ct., 2430, 2438 (1990) ("Federal law is enforceable in state courts . . . because the Constitution and laws passed pursuant to it are as much laws in the States as laws passed by the state legislature"). Accordingly, because the Federal Constitution bans racial discrimination in voting, and because the Voting Rights Act specifically implements a constitutional provision, this Court must determine whether the Joint Resolution of Apportionment complies with the Voting Rights Act."

Brief of Miguel DeGrandy, Et al. In Opposition To Constitutionality of Joint Resolution 2G (filed April 24, 1992 in Fla. S.Ct. No. 79,674) at 9-10.

2. "In the current redistricting cycle, decisions of the various courts that have been involved in preparing or evaluating redistricting plans have consistently held that a Section 2 analysis is constitutionally imperative. Terrazas v. Slagel, (W.D. Tex. No. A91CA425, December 24, 1991); Hastert v. State Board of Elections, 777 F.Supp. 634 (M.D.Ill. 1991) (three-judge panel); Wesch v. Hunt, —— F.Supp. ——, 1992 W.L. 45533 CIV91-0787 (S.D.Ala. March 9, 1992); Wilson v. Eu, No, S022835 (Cal. January 27, 1992; Fletcher v. Golder, —— F.2d. —— (1992 W.L. 51295) (8th Cir. March 1992).

Because of 1987 amendments to rules implementing Section of the Voting Rights Act, this Court, must, in actuality, conduct both a Section 2 and a Section 5 analysis of the Joint Resolution. In 1987, in response to the 1982 amendments to the Voting Rights Act and changes in decisional law, the Department of Justice amended its Section 5 regulations to add the "totality of circumstances" test embodied in Section 2 to the preclearance review process. *See* CFR § 51.55(b). The 1990 reapportionment process is the first post-census application by the Department of Justice of this new standard to Section 5 jurisdiction.

Accordingly, if the Joint Resolution were declared to be valid, it would undergo a Section 2 analysis in the Section 5 preclearance review process by the Department of Justice. This Court has no less of a responsibility to ensure the plan's compliance with the Federal Constitution than does the Department of Justice. It would be inefficient and demeaning to the dignity of this Court to accept Proponents' suggestions and perfunctorily declare valid the Joint Resolution, only to have that review nullified by the Department of Justice. Such an inefficient result can be avoided by this Court's full evaluation of the plans, based on evidentiary proceedings, under Section 2 of the Voting Rights Act."

Brief of Miguel DeGrandy, Et al. In Opposition To Constitutionality of Joint Resolution 2G (filed April 24, 1992 in Fla. S.Ct. No. 79,674) at 13-14.

3. "Proponents make the remarkable assertion that this Court need not make such an inquiry, essentially because it is just too hard. (See p. 17 of Proponents' Brief). The voters' rights to a constitutional redistricting plan cannot be so cavalierly dismissed. The United States Constitution requires this Court to conduct a full Section 2 analysis on the basis of full

evidentiary proceedings. To the extent that Article III, Section 16, and decisions of this Court construing that Section, do not permit such proceedings, the provision is unconstitutional as applied."

Brief of Miguel DeGrandy, Et al. In Opposition To Constitutionality of Joint Resolution 2G (filed April 24, 1992 in Fla. S. Ct. No. 79,674) at 15.

APPENDIX M

SJR 2-G

ADOPTED APRIL 10, 1992

REPRESENTATIVE DISTRICTS:

A PLAN OF APPORTIONMENT

FOR

THE FLORIDA HOUSE OF REPRESENTATIVES

Report Prepared by

COMMITTEE ON REAPPORTIONMENT
FLORIDA HOUSE OF REPRESENTATIVES

April 13, 1992

DB: FLORIDA

District Summary
1990 Voting Age Population (18+) by Race and Ethnicity
Plan: H0600 House (SJR 2-G) (SP268)

Plan type: Florida House

District Name	Total Pop	Total VAP	Non-Hisp White VAP	Non-Hisp Black VAP	Hispanic VAP	Tot. Black VAP
District 1	108,297 100.00%	78,076 72.09%	65,552 83.96%	10,126 12.97%	818 1.05%	10,175 13.03%
District 2	108,421 100.00%	81,417 75.09%	72,135 88.60%	4,867 5.98%	1,846 2.27%	4,952 6.08%
District 3	108,317 100.00%	81,305 75.06%	57,096 70.22%	21,055 25.90%	1,430 1.76%	21,151 26.01%
District 4	108,418 100.00%	82,499 76.09%	75,716 91.78%	2,745 3.33%	1,908 2.31%	2,787 3.38%
District 5	108,340 100.00%	79,113 73.02%	66,510 84.07%	8,934 11.29%	1,779 2.25%	9,023 11.41%
District 6	108,440 100.00%	81,212 74.89%	69,411 85.47%	8,566 10.55%	1,364 1.68%	8,623 10.62%
District 7	108,417 100.00%	81,139 74.84%	66,788 82.31%	12,081 14.89%	1,511 1.86%	12,222 15.06%
District 8	106,377 100.00%	81,289 76.42%	40,883 50.29%	37,206 45.77%	1,956 2.41%	37,401 46.01%
District 9	108,403 100.00%	83,409 76.94%	70,702 84.77%	9,258 11.10%	2,243 2.69%	9,362 11.22%

District 10	107,956 100.00%	79,996 74.10%	66,978 83.73%	11,529 14.41%	918 1.15%	11,572 14.47%
District 11	108,161 100.00%	78,525 72.60%	61,191 77.93%	15,442 19.67%	1,371 1.75%	15,550 19.80%
District 12	108,091 100.00%	78,835 72.93%	66,483 84.33%	10,585 13.43%	1,200 1.52%	10,721 13.60%
District 13	108,070 100.00%	77,798 71.99%	67,104 86.25%	5,734 7.37%	2,638 3.39%	5,850 7.52%
District 14	106,414 100.00%	76,692 72.07%	33,477 43.65%	41,168 53.68%	1,092 1.42%	41,412 54.00%
District 15	106,429 100.00%	77,176 72.51%	35,953 46.59%	39,260 50.87%	1,164 1.51%	39,511 51.20%
District 16	108,068 100.00%	83,682 77.43%	71,775 85.77%	8,422 10.06%	2,058 2.46%	8,525 10.19%
District 17	107,966 100.00%	79,632 73.76%	68,770 86.36%	6,159 7.73%	2,355 2.96%	6,251 7.85%
District 18	107,867 100.00%	84,788 78.60%	73,697 86.92%	6,657 7.85%	2,679 3.16%	6,780 8.00%
District 19	108,213 100.00%	77,187 71.33%	70,869 91.81%	2,857 3.70%	1,901 2.46%	2,909 3.77%
District 20	107,926 100.00%	85,390 79.12%	76,045 89.06%	6,434 7.53%	2,202 2.58%	6,563 7.69%
District 21	107,743 100.00%	79,835 74.10%	69,546 87.11%	8,369 10.48%	1,411 1.77%	8,415 10.54%
District 22	107,976 100.00%	81,301 75.30%	68,766 84.58%	7,980 9.82%	3,137 3.86%	8,062 9.92%

District Name	Total Pop	Total VAP	Non-Hisp White VAP	Non-Hisp Black VAP	Hispanic VAP	Tot. Black VAP
District 23	106,917	85,769	55,541	24,142	3,354	24,361
	100.00%	80.22%	64.76%	28.15%	3.91%	28.40%
District 24	107,404	84,583	77,168	4,398	2,292	4,518
	100.00%	78.75%	91.23%	5.20%	2.71%	5.34%
District 25	108,129	84,694	77,228	3,501	3,259	3,573
	100.00%	78.33%	91.18%	4.13%	3.85%	4.22%
District 26	107,825	83,790	72,027	6,529	4,511	6,667
	100.00%	77.71%	85.96%	7.79%	5.38%	7.96%
District 27	107,903	88,687	72,052	13,820	1,804	13,937
	100.00%	82.19%	81.24%	15.58%	2.03%	15.71%
District 28	107,824	88,295	84,102	2,185	1,343	2,213
	100.00%	81.89%	95.25%	2.47%	1.52%	2.51%
District 29	107,309	80,060	66,396	10,884	1,821	11,009
	100.00%	74.61%	82.93%	13.59%	2.27%	13.75%
District 30	108,151	87,885	82,573	1,700	2,342	1,766
	100.00%	81.26%	93.96%	1.93%	2.66%	2.01%
District 31	108,098	86,213	76,226	5,310	2,953	5,440
	100.00%	79.75%	88.42%	6.16%	3.43%	6.31%
District 32	108,304	80,941	71,601	3,306	4,674	3,432
	100.00%	74.74%	88.46%	4.08%	5.77%	4.24%
District 33	108,223	79,155	64,195	9,963	3,956	10,094
	100.00%	73.14%	81.10%	12.59%	5.00%	12.75%

District 34	108,087	81,315	71,374	3,033	5,377	3,147
	100.00%	75.23%	87.77%	3.73%	6.61%	3.87%
District 35	108,410	83,811	68,256	2,641	10,402	2,822
	100.00%	77.31%	81.44%	3.15%	12.41%	3.37%
District 36	108,401	90,577	77,668	3,931	7,389	4,131
	100.00%	83.56%	85.75%	4.34%	8.16%	4.56%
District 37	107,969	81,664	71,413	3,214	5,466	3,382
	100.00%	75.64%	87.45%	3.94%	6.69%	4.14%
District 38	108,258	78,781	57,750	14,521	5,239	14,833
	100.00%	72.77%	73.30%	18.43%	6.65%	18.83%
District 39	106,429	75,225	31,350	36,987	5,630	37,769
	100.00%	70.68%	41.67%	49.17%	7.48%	50.21%
District 40	108,253	85,242	70,805	2,986	9,032	3,251
	100.00%	78.74%	83.06%	3.50%	10.60%	3.81%
District 41	107,959	81,682	70,016	4,859	5,160	5,043
	100.00%	75.66%	85.72%	5.95%	6.32%	6.17%
District 42	108,325	87,026	78,015	6,937	1,591	7,240
	100.00%	80.34%	89.65%	7.97%	1.83%	8.32%
District 43	107,870	89,228	85,679	1,591	1,442	1,615
	100.00%	82.72%	96.02%	1.78%	1.62%	1.81%
District 44	107,820	85,986	79,406	3,403	2,629	3,487
	100.00%	79.75%	92.35%	3.96%	3.06%	4.06%
District 45	108,249	84,720	79,248	1,982	2,878	2,032
	100.00%	78.26%	93.54%	2.34%	3.40%	2.40%
District 46	108,305	94,112	91,588	291	1,702	320
	100.00%	86.90%	97.32%	0.31%	1.81%	0.34%

District Name	Total Pop	Total VAP	Non-Hisp White VAP	Non-Hisp Black VAP	Hispanic VAP	Tot. Black VAP
District 47	108,243	83,227	71,699	2,967	7,203	3,053
	100.00%	76.89%	86.15%	3.56%	8.65%	3.67%
District 48	107,904	86,035	82,165	1,010	2,072	1,045
	100.00%	79.73%	95.50%	1.17%	2.41%	1.21%
District 49	108,333	91,996	88,915	645	1,653	666
	100.00%	84.92%	96.65%	0.70%	1.80%	0.72%
District 50	108,300	89,671	80,819	5,422	2,354	5,501
	100.00%	82.80%	90.13%	6.05%	2.63%	6.13%
District 51	108,323	87,442	81,894	2,072	2,028	2,118
	100.00%	80.72%	93.66%	2.37%	2.32%	2.42%
District 52	108,138	89,308	83,920	1,280	2,201	1,328
	100.00%	82.59%	93.97%	1.43%	2.46%	1.49%
District 53	107,973	89,285	84,092	2,351	1,888	2,387
	100.00%	82.69%	94.18%	2.63%	2.11%	2.67%
District 54	107,987	94,612	92,324	170	1,569	183
	100.00%	87.61%	97.58%	0.18%	1.66%	0.19%
District 55	106,476	78,962	38,349	36,611	3,353	37,061
	100.00%	74.16%	48.57%	46.37%	4.25%	46.94%
District 56	108,119	82,323	66,485	6,024	8,585	6,276
	100.00%	76.14%	80.76%	7.32%	10.43%	7.62%
District 57	107,942	86,444	72,775	3,713	7,982	3,852
	100.00%	80.08%	84.19%	4.30%	9.23%	4.46%

District 58	107,049	83,835	50,472	5,975	26,009	6,370
	100.00%	78.31%	60.20%	7.13%	31.02%	7.60%
District 59	106,377	73,171	27,198	37,231	8,102	38,052
	100.00%	68.78%	37.17%	50.88%	11.07%	52.00%
District 60	107,975	83,582	67,861	7,437	6,584	7,685
	100.00%	77.41%	81.19%	8.90%	7.88%	9.19%
District 61	108,424	84,482	74,151	5,594	3,876	5,671
	100.00%	77.92%	87.77%	6.62%	4.59%	6.71%
District 62	108,336	78,167	69,554	1,598	6,105	1,665
	100.00%	72.15%	88.98%	2.04%	7.81%	2.13%
District 63	107,930	81,283	71,831	5,932	2,840	6,015
	100.00%	75.31%	88.37%	7.30%	3.49%	7.40%
District 64	107,976	81,427	67,831	10,891	2,038	11,028
	100.00%	75.41%	83.30%	13.38%	2.50%	13.54%
District 65	108,209	83,090	66,645	13,101	2,863	13,347
	100.00%	76.79%	80.21%	15.77%	3.45%	16.06%
District 66	108,187	82,620	70,824	4,344	6,689	4,460
	100.00%	76.37%	85.72%	5.26%	8.10%	5.40%
District 67	108,368	88,212	82,728	1,726	3,253	1,766
	100.00%	81.40%	93.78%	1.96%	3.69%	2.00%
District 68	108,360	90,141	86,571	868	1,978	910
	100.00%	83.19%	96.04%	0.96%	2.19%	1.01%
District 69	108,404	88,733	78,516	6,757	2,719	6,868
	100.00%	81.85%	88.49%	7.61%	3.06%	7.74%
District 70	108,442	94,140	92,342	422	944	429
	100.00%	86.81%	98.09%	0.45%	1.00%	0.46%

District Name	Total Pop	Total VAP	Non-Hisp White VAP	Non-Hisp Black VAP	Hispanic VAP	Tot. Black VAP
District 71	108,187	90,457	86,081	1,936	1,764	2,176
	100.00%	83.61%	95.16%	2.14%	1.95%	2.41%
District 72	108,391	85,701	75,108	4,705	5,354	4,844
	100.00%	79.07%	87.64%	5.49%	6.25%	5.65%
District 73	108,391	82,925	65,765	11,563	4,906	11,880
	100.00%	76.51%	79.31%	13.94%	5.92%	14.33%
District 74	108,403	88,910	85,941	491	1,968	528
	100.00%	82.02%	96.66%	0.55%	2.21%	0.59%
District 75	108,087	91,933	88,403	450	2,645	476
	100.00%	85.05%	96.16%	0.49%	2.88%	0.52%
District 76	108,275	89,184	82,756	1,424	4,532	1,602
	100.00%	82.37%	92.79%	1.60%	5.08%	1.80%
District 77	108,384	81,409	59,662	8,233	12,406	8,977
	100.00%	75.11%	73.29%	10.11%	15.24%	11.03%
District 78	108,380	80,597	59,339	15,978	4,610	16,268
	100.00%	74.37%	73.62%	19.82%	5.72%	20.18%
District 79	108,194	79,244	64,579	4,033	9,306	4,281
	100.00%	73.24%	81.49%	5.09%	11.74%	5.40%
District 80	108,460	89,143	81,994	5,124	1,537	5,191
	100.00%	82.19%	91.98%	5.75%	1.72%	5.82%
District 81	108,319	85,917	79,632	2,557	3,026	2,684
	100.00%	79.32%	92.68%	2.98%	3.52%	3.12%

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District 82	108,120	89,357	83,704	2,851	2,248	2,901
	100.00%	82.65%	93.67%	3.19%	2.52%	3.25%
District 83	108,175	89,967	85,614	945	2,615	1,023
	100.00%	83.17%	95.16%	1.05%	2.91%	1.14%
District 84	106,352	74,881	27,519	38,966	7,557	39,800
	100.00%	70.41%	36.75%	52.04%	10.09%	53.15%
District 85	108,085	84,819	73,086	3,607	7,007	3,790
	100.00%	78.47%	86.17%	4.25%	8.26%	4.47%
District 86	107,986	86,311	63,406	9,259	12,942	10,240
	100.00%	79.93%	73.46%	10.73%	14.99%	11.86%
District 87	108,283	90,674	82,063	2,440	4,992	2,596
	100.00%	83.74%	90.50%	2.69%	5.51%	2.86%
District 88	107,972	87,107	72,068	8,427	5,784	8,991
	100.00%	80.68%	82.74%	9.67%	6.64%	10.32%
District 89	108,435	91,558	86,323	643	3,499	713
	100.00%	84.44%	94.28%	0.70%	3.82%	0.78%
District 90	108,152	88,997	74,467	8,036	5,433	8,489
	100.00%	82.29%	83.67%	9.03%	6.10%	9.54%
District 91	108,191	96,133	91,377	527	3,415	584
	100.00%	88.85%	95.05%	0.55%	3.55%	0.61%
District 92	108,067	91,574	80,560	2,071	7,792	2,255
	100.00%	84.74%	87.97%	2.26%	8.51%	2.46%
District 93	106,340	77,461	34,090	37,619	5,049	38,772
	100.00%	72.84%	44.01%	48.57%	6.52%	50.05%
District 94	106,358	78,765	33,525	38,521	5,631	39,511
	100.00%	74.06%	42.56%	48.91%	7.15%	50.16%

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District Name	Total Pop	Total VAP	Non-Hisp White VAP	Non-Hisp Black VAP	Hispanic VAP	Tot. Black VAP
District 95	108,208	89,862	80,678	2,417	5,605	2,629
	100.00%	83.05%	89.78%	2.69%	6.24%	2.93%
District 96	108,296	81,310	71,251	3,128	5,410	3,303
	100.00%	75.08%	87.63%	3.85%	6.65%	4.06%
District 97	108,355	81,701	67,906	3,387	8,763	3,594
	100.00%	75.40%	83.12%	4.15%	10.73%	4.40%
District 98	107,942	85,967	75,241	3,108	6,187	3,274
	100.00%	79.64%	87.52%	3.62%	7.20%	3.81%
District 99	108,164	84,834	67,593	7,604	8,133	7,897
	100.00%	78.43%	79.68%	8.96%	9.59%	9.31%
District 100	108,403	89,126	75,662	2,775	9,286	2,993
	100.00%	82.22%	84.89%	3.11%	10.42%	3.36%
District 101	107,400	85,876	61,441	12,270	11,045	12,841
	100.00%	79.96%	71.55%	14.29%	12.86%	14.95%
District 102	106,793	80,588	24,595	2,362	52,931	3,091
	100.00%	75.46%	30.52%	2.93%	65.68%	3.84%
District 103	106,871	73,672	9,764	41,059	22,133	42,871
	100.00%	68.94%	13.25%	55.73%	30.04%	58.19%
District 104	106,508	77,694	24,124	39,590	12,773	41,287
	100.00%	72.95%	31.05%	50.96%	16.44%	53.14%
District 105	108,429	85,461	54,647	13,110	15,428	14,122
	100.00%	78.82%	63.94%	15.34%	18.05%	16.52%

District 106	108,426	94,319	61,805	2,948	28,431	3,741
	100.00%	86.99%	65.53%	3.13%	30.14%	3.97%
District 107	106,408	88,991	29,496	1,975	56,820	3,703
	100.00%	83.63%	33.14%	2.22%	63.85%	4.16%
District 108	106,556	73,276	17,904	41,942	12,466	44,345
	100.00%	68.77%	24.43%	57.24%	17.01%	60.52%
District 109	106,481	72,965	4,380	40,281	28,021	42,918
	100.00%	68.52%	6.00%	55.21%	38.40%	58.82%
District 110	106,368	82,368	11,516	1,461	68,896	2,249
	100.00%	77.44%	13.98%	1.77%	83.64%	2.73%
District 111	106,317	84,834	16,941	2,428	64,945	4,034
	100.00%	79.79%	19.97%	2.86%	76.56%	4.76%
District 112	106,623	77,843	19,767	3,220	53,454	3,689
	100.00%	73.01%	25.39%	4.14%	68.67%	4.74%
District 113	106,385	85,733	13,795	6,371	64,901	7,919
	100.00%	80.59%	16.09%	7.43%	75.70%	9.24%
District 114	106,381	81,429	15,607	882	63,825	1,491
	100.00%	76.54%	19.17%	1.08%	78.38%	1.83%
District 115	106,514	84,937	26,998	1,071	55,449	1,444
	100.00%	79.74%	31.79%	1.26%	65.28%	1.70%
District 116	107,150	79,007	36,362	3,537	36,639	3,954
	100.00%	73.73%	46.02%	4.48%	46.37%	5.00%
District 117	106,498	87,834	23,034	3,062	60,761	3,586
	100.00%	82.47%	26.22%	3.49%	69.18%	4.08%
District 118	107,546	74,932	29,714	22,813	20,794	23,740
	100.00%	69.67%	39.65%	30.44%	27.75%	31.68%

District Name	Total Pop	Total White VAP	Non-Hisp White VAP	Non-Hisp Black VAP	Hispanic VAP	Tot. Black VAP
District 119	108,116	77,355	49,651	6,535	19,456	6,997
	100.00%	71.55%	64.19%	8.45%	25.15%	9.05%
District 120	108,294	84,826	62,741	8,279	12,769	8,637
	100.00%	78.33%	73.96%	9.76%	15.05%	10.18%
Total	12,937,926	10,071,689	7,646,760	1,109,710	1,181,454	1,150,556
	100.00%	77.85%	75.92%	11.02%	11.73%	11.42%

County Split Assignments
1990 Total Population by Race and Ethnicity

Plan type: Florida House

Census Unit	Total Pop	Non-Hisp White	Non-Hisp Black	Total Hispanic	Total Black
Dade County					
District 101	2,260	538	564	1,043	604
District 102	86,987	17,146	2,467	66,484	3,382
District 103	106,871	12,529	63,604	29,711	66,227
District 104	106,508	27,621	60,056	17,173	62,551
District 105	108,429	64,628	19,897	20,774	21,411
District 106	108,426	68,069	3,902	35,026	4,950
District 107	106,408	33,740	2,543	69,204	4,682
District 108	106,556	21,231	66,965	17,028	70,568
District 109	106,481	5,824	63,478	36,729	67,074
District 110	106,368	15,858	2,425	87,343	3,492
District 111	106,317	21,749	3,318	80,515	5,347
District 112	106,623	28,387	4,063	72,172	4,688
District 113	106,385	17,964	8,918	78,641	10,810
District 114	106,381	21,391	1,145	82,393	1,952
District 115	106,514	33,717	1,368	69,597	1,839
District 116	107,150	48,736	4,944	50,055	5,524
District 117	106,498	28,207	4,318	72,769	4,952
District 118	107,546	40,392	35,758	29,132	37,115
District 119	108,116	65,983	10,892	28,792	11,603
District 120	30,270	11,897	8,996	8,826	9,222
Total Dade County	1,937,094	585,607	369,621	953,407	397,993

APPENDIX N

TESTIMONY OF DARIO MORENO

TR. II, 14

* * * *

[14] BY MR. HEBERT:

Q All right. Are there any other pockets of growth in particular with regard to the Hispanic population from 1980 to 1990 or other sections of Dade County that have large geographic concentrations of Hispanic voters? And if you could identify the ethnicity of the Hispanics that you're talking about.

A Well, the two most dramatic areas of growth in Dade County for Hispanics are along the beach, Miami Beach. Miami Beach in 1980 census was only 30 percent Hispanic. Now it's 49 percent Hispanic. And the most dramatic growth though has been in this area, this Kendall Lakes, West Kendall area.

Q Is there a—where is the Homestead section of Dade County and could you describe whether or not there has been any growth there and what the nature of that growth has been, if any?

A Homestead area is over here (indicating).

* * * *

[17] For example, in the 1989 election, the Windward neighborhood, which is basically a poor neighborhood in—poor Puerto Rican neighborhood, basically a transition—another transition zone between blacks and Hispanics—voted less than Cuban Americans but still gave a majority of their votes to Ileana Ros-Lehtinen in her race against Cheryl Richardson (sic), at least those precincts in Windward did.

In the 1980's we had the arrival of—the census say—seventy-nine thousand Nicaraguans. Everyone I spoke to—demographers, sociologists, social workers in Dade

County—believe that's undercounted by at least thirty thousand. There's probably closer to a hundred and ten thousand Nicaraguans in Dade County. And the Nicaraguans have settled in—it's hard to tell on this map; I assume this is my university, FIU, that little white spot—have settled here in the Sweetwater area, a large number, Sweetwater, Westchester, Nicaraguans; some Nicaraguans in the east Little Havana, north Little Havana area.

Also in the 1980's we had refugees from Colombia [18] escaping the drug war. These tend to be wealthier and they moved into the West Kendall area; same with Peruvians in the 1980's. But the distinction among these people are that they tend to be more conservative, all the groups. All the Hispanic ethnic groups by nationality tend to be more conservative than their counterparts in other large U.S. metropolitan areas.

Also, I think we need to ask a question: Why did Miami become a magnet for four hundred thousand Latin American refugees during the 1980's? And the reason for it was the already existence of this large Hispanic enclave created by Cuban Americans, in which Latin Americans felt that they could come here without suffering the kind of language barriers and discrimination barriers that they would suffer in other large U.S. cities. So, the existence of the Cuban enclave was a magnet for the Hispanic groups.

* * * *

TESTIMONY OF MIGUEL DEGRANDY

TR. IV, 51

[51] Q. The seat you refer to as the access seat in the state's plan is which district and who is the incumbent?

A. One sixteen, the yellow district, Art Simon.

Q. And that district is now drawn with something approaching, what, 50 percent?

A. Forty-eight percent, I believe.

* * * *

TESTIMONY OF GEORGE MEIER

TR. VI, 210-211

• • • •

[210] Q What about voting age population?

A Slightly over 50 percent, five zero point five is voting age Hispanic population.

Q And as I heard you say there are nine Hispanic voting age populations in this area?

A Yes, sir, there are nine districts in this, in the Florida plan in which the Hispanic voting age population constitutes a majority.

Q Okay. And so that is more than half then of the districts wholly contained within Dade County?

A The population of Dade County is such that if you could draw all districts solely within Dade County, the populations such to support just under 18 districts, I believe it is 17.94 districts can be drawn in the one point nine million, within using the nine point one millon people in Dade County.

With five zero point five percent of the voting age population being identified in the census as Hispanic, nine out of 18 is, in fact, directly proportional to that 50 percent of the voting age population.

Q Half the voting age population, half of the number of districts?

A Yes, sir.

• • • •

[211] Q Well, while you are still on that one let's just talk about the black population a little bit.

What percentage of the Dade County population do they compose?

A I believe it's just at 20 percent of the total populations non-Hispanic black.

• • • •

TESTIMONY OF WILLIAM DE GROVE

TR. VII, 5-24

• • • •

[5] WILLIAM M. DE GROVE

was called as a witness, having first been duly sworn to speak the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

• • • •

[6] (Whereupon, Joint Exhibit Nos. 1, 2 and 3 were marked for identification.)

(Pause) Did we swear the witness? That's what I was waiting for.

DIRECT EXAMINATION

BY MS. BUTLER:

• • • •

[7] Q Did you have occasion to use those tools in the course of your employment with the state?

A Several times, yes. I have published work in regression analysis some years back while employed with the state.

Q Do you have with you at the stand a collection of exhibits that are stapled together and the first pages of which are affidavits?

A Yes, I do.

Q We have now marked this as Defendant's Joint Exhibit 1 for identification. Does the second page of Joint Exhibit 1 contain your current vita?

A Yes, it does.

Q And the articles that you mentioned having published concerning some of these statistical tools, are those the ones listed in your vita?

A Yes.

Q Do you have occasion in your work to make use of regression analysis?

A Quite frequently. We do literally dozens of regressions in our committee on reapportionment.

Q I think you commented to me you do regression analysis in your sleep?

A I dream about it occasionally.

* * * *

[8] MS. BUTLER: Your Honor, I would like to tender Mr. De Grove to this court as an expert in the use of statistical devices for the purpose of offering expert opinion.

JUDGE HATCHETT: Do you stipulate?

MR. HEBERT: The proffer, as I heard it was an expert in the use of statistical devices. I will agree that he is an expert in the use of statistics, if that suffices, which I think it should.

THE WITNESS: Thank you.

MS. BUTLER: I should add, also, in demography. He is a demographer and this is his primary occupation in life.

MR. HEBERT: I would stipulate he's a demographer as well.

BY MS. BUTLER:

Q Have you brought with you to the stand today, Mr. De Grove, a number of exhibits?

A Yes.

* * * *

[10] Q If you will, Mr. De Grove, would you turn to what is the third page that has at the top of it Select Demographic Data for Florida?

A I have it.

Q Can you explain to us what this chart contains?

JUDGE STAFFORD: Is this the one 1950 to 1990?

MS. BUTLER: It is, Your Honor.

THE WITNESS: Yes, sir.

JUDGE STAFFORD: Okay, thank you.

BY MS. BUTLER:

Q All right.

A These are some selected data showing the composition and trends in the black population and Hispanic population in Florida over the last—for the Hispanic populations the last four decades and for the black the last five decades. These data are simply pulled from census materials available in any library, and the references are attached for each [11] year that's on the chart.

Q Go ahead, what do you see when you examine the change over time?

A You simply see the—well, let's look at the black population first. You see it's on the second line, it's total, the percent of the state that's black and the median age of the black population, and as you read from left to right you see its growth over the decades and its change in the relative percentage of the state. In 1950, the state was 21.8 percent black. That has gradually declined to 1990 where it's 13.6 percent. You also have the percent of the black population which are native Floridians, and that percentage has held fairly steady in the sixties, 60 percents.

Q What about the Hispanic population?

A The next panel down gives similar data for Hispanics. I do not have the data for 1950, but in 1960 you can see that we had in the state 70,195 Hispanics comprising only 1.4 percent of the state's population. 40.6 percent of these were native Floridians, and significantly, the largest group were living in Dade County and the second largest group lived in Pinellas/Hillsborough.

As you follow the decades forward to 1990, the Hispanic population has grown dramatically. Its percentage of the state's total has now risen to 12.2, and the percent [12] of Hispanics who are native has fallen, as you would expect, because of immigration. We don't have the data for 1991.

JUDGE STAFFORD: You don't have it for '90?

THE WITNESS: It's not available from the census bureau.

BY MS. BUTLER:

Q Why did you prepare this particular chart?

A Well, I wanted the Court to be aware of the percentage of the population in 1960 that was Hispanic in this state and also forward on. I think it's relevant information to know what proportion of the population they comprised historically in the state.

Q All right, I would like for you now to explain the next several pages. I don't think we're going to deal with any of these, but since they're here we might just tell the Court what the packet is referring to, the one that's just the title page for the census.

A That's simply the reference page for the previous chart, one page for each decade.

Q And the next page?

A Earlier, '90, '80, '70.

Q What is the next page that we need to look at in your exhibit here?

A It begins with a graph.

Q Would it be this page, the graph paper with the—

[13] A Yes.

Q That's actually on Page 8.

JUDGE VINSON: Got it.

MS. BUTLER: Okay.

BY MS. BUTLER:

Q Could you explain to the Court what this is?

A Yes, and I would like to use ink pen and paper to do this, if the Court would allow.

Q By the ink pen, do you mean chart that's—

A Magic marker.

Q May he do that?

JUDGE HATCHETT: Is it possible for him to give his ultimate conclusion without doing this?

MS. BUTLER: It certainly is, Your Honor, but there seems to be some question about whether this methodology actually produces results that are accurate, and if there's any question about that, I certainly want to explain.

BY MS. BUTLER:

Q Would you tell us what you ultimately conclude based on the chart that's here in the—what the purpose of the chart was that you were trying to deal with?

A What we are exploring here, if you'll read the written material on this chart, is the relationship between the percent of VAP, voting age population, in Dade County which is noncitizen. That—the relation of that variable to the [14] percent of the VAP that is Hispanic, and that's done by a bivariate regression model. And what you see in front of you is the regression line. It's the best fit line to the census tracts in Dade County where the Y axis is the percent noncitizen.

Q Would you point out the Y axis in case there's any question about that? Probably really would be easier for him to do that from here.

JUDGE STAFFORD: Is that the vertical or horizontal axis?

THE WITNESS: If I could go to the board.

MS. BUTLER: You'll know more about it than you ever wanted to.

BY MS. BUTLER:

Q Before you—will you explain where the information came from that's going to go into this chart, where the actual numbers come from?

A The census bureau has released certain detailed data on magnetic tapes. Those are called summary tape files. The summary tape file 3-A—and let me explain that. The 3 indicates that that's detail data from the sample questionnaire. Every household receives a questionnaire. A proportion of households receive a detailed questionnaire. Detailed questionnaires ask very in-depth

questions, and the questions we are trying to answer here are not asked of [15] everybody. That's what the 3 means. The A simply means that the data have been aggregated at the—no lower than the bloc group level. Bloc groups are 5- or 600 persons on average. They are the unit just below census tract, geographic unit.

Q Is it information also aggregated at the census tract level?

A Yes, the tape reports aggregates from bloc group up so that you have an aggregate piece of information for the tract, an aggregate piece of information for the county, and so on up the line. There is aggregated data for the state.

Q So your Y axis then, percent not citizen—

A What we are trying to relate here is the Y axis, which is percent noncitizen, to the X axis, which is percent VAP Hispanic. Both of these are VAP, let me underscore that. The census bureau has given us on this tape the percent of VAP who are citizens and who are not citizens. But they have not told us whether those people are Hispanic or whether they're Anglo or black or white. So—and they have told us, of course, the percent VAP—percent VAP Hispanic in all the census units.

So the statistics involved is to relate these two variables and attempt to extract some usable information from it. And we use bivariate regression to do this. And we—what we plot are the locations of the census tracts in [16] Dade County. For example, if there is a census tract that's 73 perecnt Hispanic and it's 43 perecnt noncitizen, it would land right about here. (Indicating).

Then, as I believe testimony has been issued in the Court before, these data are fitted—these census tract coordinates are fitted with a least squares line. That means it's the best straight line that can go through the dots minimizing the distance squared of the dots from the line. That's why it's called the least squares line. Statisticians generally accept this—I'd say universally accept the least squares fit as the best linear model. Linear

meaning we have fit the data with a straight line. There are other ways to fit the data.

JUDGE HATCHETT: Mr. De Grove, we understand the methodology.

MS. BUTLER: Are you ready to be cross-examined on it, Your Honor?

JUDGE HATCHETT: No, we're ready for the next question.

BY MS. BUTLER:

Q You were about to tell us when you cross the 100 percent point this tells you the estimate of the line?

A Let me tell you the 100 percent line on up, and the zero percent line, and you'll see that this least squares line intersects the two lines and it gives you two points of [17] major interest, and let me explain. The intersection at this point is the percent of those tracts with zero Hispanics who are noncitizens, and I found that this line intersected at about nine and a half percent, or .095, .95, nine and a half percent, indicating that if you have a track with no Hispanics in it, you would expect nine and a half percent noncitizens. As the line goes across to the 100 percent VAP Hispanic, the intersection point is about .55. If you can look on my chart, you will see that, and if you can follow across with your finger.

This represents, then, the—by 100 percent, a tract of all Hispanic persons, VAP, and the model implies that 55 percent—I didn't draw this exactly right—implies that 55 percent of them would be noncitizens.

Q Fifty-five percent of the Hispanic population in Dade County are not citizens according to this calculation?

A No. Fifty-five percent of the persons in a tract, which is 100 percent Hispanic, are not noncitizens.

Q From which you then assume what?

A Well, we—I examined an independent—a test of this. I was provided the census record by a colleague for the whole county in which you can calculate the percent

of Hispanics in the entire county who are noncitizens. The colleague gave me the figure of 32—32 and a fraction percent.

[18] Q Let's make sure we clarify that. That's the percent of the total population VAP that is not a citizen, is that correct, 33 percent?

A I'm commenting on the Hispanic now, Hispanic VAP in Dade County, Hispanic VAP in Dade County. My colleague, who examined the census bureau record—there's a record for Dade County, a single record from which you can read directly VAP Hispanics and total noncitizens. You can do simple division and derive a figure. I did not do the work, but I would—I took the VAP Hispanic in Dade County, which we know to be 50 percent, and it's been introduced in evidence in this court. And if you take the 50 percent and project it up to the regression line I found, it crosses very close to 32 percent.

Q What that means then is that in precincts that are about 50 percent Hispanic, you're going to find 32 percent noncitizens?

A That's correct.

Q And 32 percent is the rate of noncitizenship for the entire county?

A It's the overall rate, yes, that's correct.

Q Do you need to do anything more here or can you return to the stand?

A I think that will suffice.

Q Now the next several pages of the exhibit, Mr. De Grove, [19] what are these figures?

A I provided the actual computer run on this regression so that anyone interested or knowledgeable in these matters can review it.

Q With the census data they could read your analysis?

A Absolutely, with a couple of warnings. I have deleted the two tracts which are in fact shifts and I have deleted the one tract which has no population. So this is a regression model with 264 observations.

JUDGE VINSON: Did you delete one that had no population?

THE WITNESS: There's a tract in Dade County with no persons, so I did not use an analysis, and there are two tracts which are shifts, temporarily dot in Dade County, I didn't think they had any relevance.

BY MS. BUTLER:

Q Mr. De Grove, based on your analysis, what percentage of the Hispanic voting age population in Dade County are citizens?

A Based upon this analysis, it would be about 32 and a half percent—I'm sorry 32 and a half percent would be noncitizens.

Q Of the whole county now, let's just talk about the Hispanics. What percentage of the Hispanic VAP in Dade County are not citizens?

[20] A Are not citizens? About 32 and a half percent.

Q Look at your—

A Would we work that out?

Q Look at your 100 percent line and tell me what that figure is. Isn't this a percent of Hispanics in Dade County that are not citizens?

MS. WRIGHT: Objection, Your Honor, that is certainly not his testimony. It's absolutely incorrect based on what he said.

THE WITNESS: I'm sorry—

MR. ZACK: I think we're after the truth.

THE WITNESS: The right-hand side of this line—It's early in the morning, I'm sorry—is a tract that is 100 percent Hispanic. In that tract, 55 percent of the VAP are noncitizens. The 32 percent is the average for the entire county.

Q I'll ask you again, see if we can't get this straight here. What percent of all the Hispanic citizens do you estimate from this are not citizens—Hispanic population, voting age, are not citizens?

A Fifty-five percent of Hispanic VAP are not citizens.

MR. HEBERT: Your Honor, if I may—

JUDGE HATCHETT: You'll be able to develop that on cross. That may be the easiest way to get to this.

JUDGE VINSON: There is some confusion. Of all the [21] citizens in Dade County, 32 percent are not citizens.

THE WITNESS: Yes, sir. That is exactly right.

JUDGE VINSON: If you have a tract that's 100 percent Hispanic, you would expect that to have 55 percent.

THE WITNESS: Yes, sir, that's exactly right.

JUDGE VINSON: I don't see how we can say it any way clearer.

MS. BUTLER: Are we clear now?

BY MS. BUTLER:

Q Again, doctor—Mr. De Grove, this is the standard methodology by which you would estimate the percent noncitizens for the entire Hispanic population. Is that an accurate statement?

A I think so, yes.

Q Now, if you will turn to what's—if we may, could we mark this handwritten chart as an exhibit to this testimony?

JUDGE HATCHETT: Yes.

MS. BUTLER: This will be Defendant's Joint Exhibit 4.

THE CLERK: Joint.

(Joint Exhibit No. 4 was marked for identification.)

MS. BUTLER: No objection. I'd like to go ahead and move that into evidence.

MR. HEBERT: No objection.

[22] MR. RUMBERGER: No objection.

JUDGE HATCHETT: Admit it.

(Joint Exhibit No. 4 received into evidence.)

BY MS. BUTLER:

Q Return to Joint Exhibit 2 which is titled at the top of it Adjustment For Citizenship, Dade County Districts.

A I have it.

Q Will you explain to use, please, what this exhibit is?

A Yes, I—what I have done here is contrast the Reaves/Brown/Hargrett plan for the House of Representatives and the State's plan for the House of Represenatives. I have shown the original data for each plan, total VAP, Hispanic VAP, all other VAP and percent Hispanic.

Q Why don't you use a first cell here, District 103, which is in the left-hand corner of the charts, just to explain to the Court what each of these numbers is in that bloc. Maybe you can simply do that.

A Can I put this on a piece of paper real quickly?

Q I think we're about to test the patience of the Court. They've got it in front of them. Just explain to them, what is the adjustment factor, for example? That's probably the most important piece of information.

A Let's look at District 103. We show the original data in the left column. We show the adjustment factors, referring right over to the graph, 55 percent of Hispanics, [23] VAP, are noncitizens, and approximately ten percent, actually .0956 of all other VAP are noncitizens. So I have adjusted the original data by subtracting those proportions from the original data, and have provided a third column. For example, the 51,752 Hispanics, because we know that 55.07 percent of them are noncitizens, those persons are removed from the 51,752 to produce a new figure. 23,252. From the all other VAP we know that approximately ten percent are noncitizens. Those persons are removed from the 26,843 to produce a new figure of VAP citizens. The two figures are summed to produce the new total VAP, which is now citizens, 47,529, and new percentage Hispanic as calculated.

Q So for this particular district, the bottom line is 48.92 percent of the citizen population VAP is Hispanic?

A That's correct.

Q Now, is that the same figure that's reported for each and every one of the districts on the page?

A Yes, I've done the same calculation for all the districts in Reaves/Brown/Hargrett and in the state's plan.

Q I think we're calling it the Florida plan now.

A Florida plan.

Q All right, so after computing these calculations, Mr. De Grove, how many of the districts that began as a majority Hispanic districts in the Reaves/Brown plan, are [24] majority Hispanic in terms of the citizen VAP?

A Only three of 11.

• • • •

TESTIMONY OF WILLIE LOGAN

TR. VII 73-77

[73] A Well, I actually, for the past couple years, I've been involved in preparing for reapportionment, first ensuring that people were counted and participated in the census. Second, I participated in any number of workshops that were held by the National Conference of State Legislators, NAACP—

Q Slowly.

A —the NAACP and many other organizations around the nation in preparing for the upcoming apportionment process. As the Legislature received the census data, I participated in the fall, as it relates to becoming familiar, with where were the population pockets and particularly as it relates to the black community throughout the State of Florida. I attended most of the 34 public hearings. I met with reapportionment task forces in the black community particularly in Dade, in Broward County. I also traveled throughout the State of Florida in meetings from black constituents. I worked very

closely with the NAACP from a statewide perspective, and I've participated in many meetings with the members of the black caucus and members of both the Democratic and Republican parties as it relates to the reapportionment process.

• • • •

[74] BY MR. PETERS:

Q You are a member of the black caucus?

A Yes, sir.

Q What role did the black caucus play in the creation and passage of what we now call the State House plan? My concerns are particularly Dade County, but—

A Well, sir, let me just back up a little bit. The black caucus originally in early fall identified areas within the state that we felt there was sufficient amount of population in order to attempt to create both a majority black disrict and access black districts. We adopted a definition which was prepared by Representative Jones, which defined—which would reflect the black district and also which would be an accurate black district.

• • • •

[75] A * * * We included in that the 15 black districts that are within the State plan, with some modifications, and some modifications as it relates to this Escambia County District. I would say to you, sir, that 96 to 98 percent of the configuration of the districts within the joint resolution were the ones that were proposed by the black caucus.

Q What other members of the black caucus participated in this determination? Was there disagreement within the caucus as to that determination?

A Well, there was no disagreement until January 27th, that Super Bowl—, actually the two days preceding Super Bowl weekend. Up to that point, Senator Meek, Representative Jones, Burke, myself, Representative Clark, Hargrett, Reddick, Brown, Holzendorf and Lawson, all participated in the drawing of those districts. And

there was a concensus among the members of the caucus as relates to the number of districts that we would draw.

Q Talking about Dade County now?

A Well, in Dade County, Representative Burke, Jones, Senator Meek and myself. Representative Reaves, who's a doctor, is the only member from Dade County not on the reapportionment committee, who said that he was not going to [76] be involved in reapportionment, and, quite frankly, did not participate in any meetings we had up until that Super Bowl weekend. And this started back in September of 1991.

Q So the caucus involved in a process beginning in September?

A Well, yes, that's when we hit the census information.

Q Yes, sir.

A Yes, sir.

Q And Mr. Reaves' participation emerged some time after the first—

A Super Bowl weekend.

Q Were there occasions for the black caucus within itself to have votes on the emerging House plan?

A Yes, we did, and quite frankly, there was never any controversy in terms of the 16 potential districts that could be drawn, 15 of which we thought we could effectively elect black candidates, one of which we thought to have an influence on race. And that was the concensus that was brought on early on. What we worked on from that point was actually defining exactly where those lines should be.

And by the way, sir, we adopted, particularly in Dade and Broward County, the plan that was recommended by the Dade Fair Reapportionment Committee and by the Broward Fair Reapportionment Committee, and those House districts are essentially what was recommended by those committees. [77] And those committees, unlike earlier presentation, were not made up of a given fraction of the community. For example, in Dade County it was the black lawyers, black psychologists, black accountants,

NAACP, the laymen's group, black educators, black social workers. There were about 12 black organizations that came together as one entity and worked over about a five-month period and came and made a presentation before the Legislature at the Opa-Locka public hearing, also the downtown public hearing and in the Broward County public hearing, recommending the districts as you see them in this joint resolution with only minor modifications.

* * * *

TESTIMONY OF WILLIE LOGAN

TR. VII, 98-99

* * * *

[98] Q Do you believe that this plan, this State plan, Florida plan, adequately represents Hispanics in the Dade County area?

A Yes, and I'm really happy someone asked that question. You know, when we first started drawing these districts, we took the 1.89 million people in Dade County, we took the percentage of Hispanics, which is 50 percent. We took the percentage of blacks and took the percentage of whites. And the numbers we came out with which were nonHispanics, four blacks and five whites. Of course that district ended up being five blacks and four whites and nonHispanics, and we feel, and I personally feel, that that adequately represents the proportionality of blacks, Hispanics and whites in a multiculture, multiethnic community.

TESTIMONY OF LEON RUSSELL

TR. VII, 139

* * * *

[139] MR. PETERS: Judge, in the absence of a stipulation we would tender Mr. Leon Russell. His testimony will be to the point, to the point that the NAACP supports

the House plan Dade component that he participated in implement, drafting the plan, that he endorses the plan.

That is, that is his testimony. If they will so stipulate we can save half an hour, Judge.

MR. BURR: We will make that stipulation with respect to Dade County.

MR. PETERS: Yes, sir. That's all.

* * * *

TESTIMONY OF PETER WALLACE

TR. VII, 164

* * * *

[164] There are 18 districts controlled by Dade County. There were nine solid majority Hispanic districts. There was one 47 percent Hispanic district VAP which had, has every prospect of becoming a majority VAP Hispanic district in the very near future because of growth trends.

There were four seats with a clear black VAP majority. Three seats, three seats where there would be a clear Anglo majority, and one black influence district which is presently held by a black member of the House.

It was carefully balanced. It was carefully crafted. There was a great deal of input from members of the House from Dade County, including black, including Hispanic, and including Anglo members.

We were very proud of that product, and I do believe that it was, represents the best and most fair result as a Dade County redistricting map for this next 10 years.

* * * *

COURT RULING

TR. VIII, 53

* * * *

[53] The Court finds that the plaintiffs have shown a fourth Hispanic district can be drawn in accordance with the Gingles standard, but the plaintiffs have failed to prove that a fourth Hispanic district can be drawn without

creating a regressive effect upon Afro-American voters in Dade County and South Florida.

Consequently, under Supreme Court precedent, this Court must give deference to the state policy as expressed in the Florida plan as validated by the Florida Supreme Court.

* * * *

COURT RULING

TR. VIII, 82

* * * *

[82] JUDGE HATCHETT: We're prepared to make a ruling as to the House at this time. The Court finds that under the totality of the circumstances the plaintiffs have shown a violation of Section 2 in that the plaintiffs have shown that more than nine Hispanic districts may be drawn without having or creating a regressive effect upon black voters in South Florida and in Dade County.

* * * *

REMEDIAL HEARING

TR. VIII, 97-98

* * * *

[97] JUDGE HATCHETT: We don't—we do not intend to have any more evidence regarding plans. If you want to [98] make about a ten-minute argument in support of an existing plan, you may do so. Or you may make an argument urging the Court to create a plan. But we do not intend to hear any more evidence regarding plans.

MR. PETERS: Judge, for the record, may the House respectfully object to your ruling. This is a very complex matter. The Court is aware there are competing conflicting interests within Dade County between the black community, the Hispanic community and, indeed, the Anglo community. The Court has heard the testimony as to black community of interest affecting the Dade/Broward intercept. We would submit to the Court that the plans

that are being tendered exceed Dade County, go into Broward County and, in fact, violate that fundamental principal that the NAACP and the House have attempted to protect.

With all due respect to the Court, the House would ask for the opportunity to tender to the Court appropriate data to compare the plans tendered, our plan, with an overlay, to enable this Court to proceed circumspectfully and in a manner free from taint and arbitrariness from discrimination per cases cited in our remedies memorandum. We have gone this far, Judge. We have spent millions of dollars to do this. In this environment, like a used car auction, is just not up to task.

* * * *

TRANSCRIPT OF PROCEEDINGS
6/26/92

TR. I, 7

* * * *

[7] Document 453, House defendants' emergency motion for reconsideration. Denied.

Document 455, NAACP's motion for reconsideration. Denied.

Document 459, plaintiffs Reaves, Brown and Hargrett emergency motion to conduct Senate redistricting hearing and supplemental renewed motion for legislative redistricting. Denied.

Document 477, legislative defendants' emergency motion for reconsideration, and in the alternative, motion for enlargement of time. Denied.

Document 478, plaintiffs' motion to strike proposed state Senate redistricting submitted by Margolis and Wetherell. That will remain pending for the moment.

Document 479, House defendants' motion in limine and opposition to consolidating. I will tell you more about that in just a moment.

Document No. 481, defendants Chiles, Butterworth and Smith's emergency motion for reconsideration. Denied.

We will hear argument on the following motions:

Document No. 482, Alberto Cardenas' motion for leave to appear PHV;

Document No. 483, Alan K. Fertel, motion for leave to appear;

* * * *

APPENDIX O

DEFENDANTS JOINT EXHIBIT 2

ADJUSTMENT FOR CITIZENSHIP
DADE COUNTY DISTRICTS

REAVES/BROWN/HARGRETT — SJR 2-G

	District No. 103			District No. 102		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	78,595		47,529	80,588		48,795
Hispanic VAP	51,752	0.5507	23,252	52,931	0.5507	23,782
All other VAP	26,843	0.0956	24,277	27,657	0.0956	25,013
% Hispanic VAP	65.85%		48.92%	65.68%		48.74%

	District No. 105			District No. 107		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	89,563		52,068	88,991		54,625
Hispanic VAP	63,575	0.5507	28,564	56,820	0.5507	25,529
All other VAP	25,988	0.0956	23,504	32,171	0.0956	29,095
% Hispanic VAP	70.98%		54.86%	63.85%		46.74%

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	District No. 109			District No. 110		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	80,435		49,103	82,368		43,139
Hispanic VAP	51,951	0.5507	23,342	68,896	0.5507	30,955
All other VAP	28,484	0.0956	25,761	13,472	0.0956	12,184
% Hispanic VAP	64.59%		47.54%	83.64%		71.76%

	District No. 110			District No. 111		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	79,051		47,897	84,834		47,167
Hispanic VAP	51,849	0.5507	23,296	64,945	0.5507	29,180
All other VAP	27,202	0.0956	24,601	19,889	0.0956	17,988
% Hispanic VAP	65.59%		48.64%	76.56%		61.86%

	District No. 111			District No. 112		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	82,372		45,194	77,843		46,074
Hispanic VAP	64,389	0.5507	28,930	53,454	0.5507	24,017
All other VAP	17,983	0.0956	16,264	24,389	0.0956	22,057
% Hispanic VAP	78.17%		64.01%	68.67%		52.13%

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DEFENDANTS JOINT EXHIBIT 2—Continued

REAVES/BROWN/HARGRETT SJR 2-G

	District No. 112			District No. 113		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	87,677		53,547	85,733		48,000
Hispanic VAP	56,576	0.5507	25,420	64,901	0.5507	29,160
All other VAP	31,101	0.0956	28,128	20,832	0.0956	18,840
% Hispanic VAP	64.53%		47.47%	75.70%		60.75%

	District No. 113			District No. 114		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	87,281		52,815	81,429		44,598
Hispanic VAP	57,399	0.5507	25,789	63,825	0.5507	28,677
All other VAP	29,882	0.0956	27,025	17,604	0.0956	15,921
% Hispanic VAP	65.76%		48.83%	78.38%		64.30%

	District No. 114			District No. 115		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	85,334		51,325	84,937		51,582
Hispanic VAP	56,803	0.5507	25,522	55,449	0.5507	24,913
All other VAP	28,531	0.0956	25,803	29,488	0.0956	26,669
% Hispanic VAP	66.57%		49.73%	65.28%		48.30%

	District No. 115			District No. 117		
	Original Data	Adjustment Factor	Adjustment for Citizenship	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	83,264		50,351	87,834		51,785
Hispanic VAP	54,829	0.5507	24,635	60,761	0.5507	27,300
All other VAP	28,435	0.0956	25,717	27,073	0.0956	24,485
% Hispanic VAP	65.85%		48.93%	69.18%		52.72%

	District No. 116		
	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	82,453		48,970
Hispanic VAP	56,252	0.5507	25,274
All other VAP	26,201	0.0956	23,696
% Hispanic VAP	68.22%		51.61%

	District No. 117		
	Original Data	Adjustment Factor	Adjustment for Citizenship
Total VAP	82,801		50,154
Hispanic VAP	54,342	0.5507	24,416
All other VAP	28,459	0.0956	25,738
% Hispanic VAP	65.63%		48.68%

APPENDIX P

EXCERPT FROM LEGISLATIVE DEFENDANTS' EMERGENCY MOTION FOR RECONSIDERATION AND, IN THE ALTERNATIVE, MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO THE THIRD AMENDED COMPLAINT

1. The Legislative Defendants, Gwen Margolis, Jack Gordon, T. K. Wetherell, and Peter R. Wallace, respectfully move this Court to reconsider its Order dated June 22, 1992 granting Plaintiffs' Motion to file a Third Amended Complaint. For the reasons stated in these Defendants' April 15, 1992 and May 22, 1992 Motions to Dismiss which they adopt and incorporate by reference, challenges to Florida's redistricting plan properly resides before the Florida Supreme Court at this time. Accordingly, these Defendants submit the Motion for Leave to Amend should have been denied and these Plaintiffs should be required to file in the Florida Supreme Court in light of its continuing jurisdiction on this matter and these Plaintiffs' presence and participation, without reservation, before that Court's jurisdiction.

* * * *

APPENDIX Q

STATUTORY PROVISIONS

§ 1973. Denial or abridgement of right to vote on account of race of color through voting qualifications or prerequisites; establishment of violation

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.